



Comhairle Contae an Chabháin
Cavan County Council

An Bord Pleanála
64 Marlborough Street
Dublin 1

23 January 2024

Ref: 344

Re: Declaration under Section V of the Planning and
Development Act 2000 (as amended)

A Chara,

I enclose herewith copy of Section V Application received from
Declan Sheridan, for the alteration and reduction in size of
unauthorised existing boundary fencing subject to ABP refusal
31569/23, which we refer to you for decision in accordance with
Section 5(4) of the Planning and Development Act 2000 (as
amended).

Statement of grounds for referral and fee of €110 is enclosed.

Mise le meas,

Cathal Boylan

Senior Staff Officer

AN BORD PLEANÁLA	
LDG-069575-24	
ABP-318947-24	
30 JAN 2024	
Fee: € 110.00	Type: CMA
Time: 9.00am	By: Post

Cavan County Council
Courthouse
Farnham Street
Cavan H12 R6V2

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CAVAN COUNTY COUNCIL

From **Eve Harrison**
Executive Planner

To **Nicholas O’Kane**
Senior Planner
Planning Department

MEMORANDUM

Date: 19th January 2024

Subject: Application for Declaration under Section 5 of the Planning and Development Act, 2000 (as amended)

Reference No.: 344

Applicant: Declan Sheridan

Reference subject: The alteration and reduction in size of unauthorized existing boundary fencing, subject to a ABP refusal No. 31569/23, is exempted development.

Site Location: The site is located at Tirquin, Dublin Road, Cavan Town, co. Cavan.

Figure 1: Site Location



Source: Cavancoco.GIS

REFERRER’S SUBMISSION TO THE PLANNING AUTHORITY

An application was received on the 19th of December 2023, by Cavan County Council, from the Referrer– Declan Sheridan, Meadow View Inn, Dublin Road, co. Cavan.

According to the submission this Declaration is sought in respect of whether:

‘the alteration and reduction in size of unauthorized existing boundary fencing, subject to a ABP refusal 3159/23, is considered to be Exempted development.’

Documentation submitted:

- Cover Letter from Declan Sheridan, adjoining landowner with rationale for exemption (dated 6th September 2023)
- Copy of the site layout plan and the site location map submitted with the application for planning permission 22/492 which identifies the location of the site and fencing on site.

PLANNING HISTORY

I refer to the following planning history of the subject development:

Permission for Development - Section 34 of the Planning and Development Act, no. 30 of 2000 – 2023, as amended

22/278: JB Trident Property Ltd. - Permission sought to retain perimeter boundary fence/gate and all ancillary works. Application Refused by Cavan County Council, for the following reasons:

‘1. Having regard to the design and positioning of the existing fence, it is considered that the development subject of this retention application would have an adverse impact on the visual amenities of this prominent approach to Cavan Town, would represent haphazard, piecemeal and disorderly development, would set an undesirable precedent for similar development of this kind and would be contrary to the proper planning and sustainable development of the area. ‘

22/492: JB Trident Property Ltd. - (1) to retain perimeter boundary fence/ gate & all ancillary works carried out and (2) permission for modifications to existing fence & all ancillary works at Tirquin, Cavan, Co. Cavan. (Temporary Permission Granted By Cavan County Council for 3 years. Application REFUSED on Third Party Appeal). Refused by an Board Pleanála (reference No 31569/23) for the following Reasons and Considerations:

‘Having regard to the design and location of the fence for which retention permission is sought, it is considered that, notwithstanding the proposed artificial screening, the development for which retention permission is sought would have an adverse impact on the visual amenities of the area onto a prominent approach to the Cavan Town, would represent haphazard, piecemeal

and disorderly development, would set an undesirable precedent and would therefore be contrary to the proper planning and sustainable development of the area.’

Declaration under Section 5. (1) and (2) a of the Planning and Development Act (No. 30 of 2000 – 2023, as amended

23/332: JB Trident Property Limited: Declaration issued under Section 5. (2) a. of the Planning and Development Act (No. 30 of 2000 – 2023, as amended for as follows:

‘ having regard to the Exemption SCHEDULE 2, Part 1, *Exempted Development- General* : CLASS 11 of the Planning and Development Regulations (S.I. No. 600 of 2001, as amended), I consider that the proposed works is regarded as Exempted Development.’

LEGISLATIVE CONTEXT

PART 1, Section 5 of the Planning and Development Act (No. 30 of 2000, as amended) : Declaration and referral on development and exempted development:

5.-(1.) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing form the relevant planning authority, a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(4) Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

RECOMMENDATION:

Having considered the previous decision by An Bord Pleanála to refuse permission for a development at this location, to the referrer’s submission and plans submitted on the 19th of December 2023, which asks the question as to whether or not the alteration and reduction in height of an unauthorised fence is or is not exempted development, and having regard to the declaration previously issued by Cavan County Council, by order dated the 3rd of October 2023, for a development – erection of a new 1.2m height perimeter boundary fence/gate & all ancillary works carried out at Tirquin, Cavan, I recommend that the matter be referred under

Section 5. (4) of the Act, to An Bord Pleanála for a decision on whether “as to whether or not the alteration and reduction in height of an unauthorised fence is or is not exempted development”.

I recommend that the following documentation be appended to the referral:

1. A copy of the contents of the file in relation to Referrer’s Section 5 Planning Declaration application No. 332– JB Trident Property Ltd.
2. A copy of the contents of the file in relation to Referrer’s Section 5 Planning Declaration application No. 344 – by Declan Sheridan.

SUBMITTED:

Signed :



**Eve Harrison
Executive Planner**

Date: 22/01/2024

APPROVED/~~NOT APPROVED~~:

Signed :



**Nicholas O’Kane
Senior Planner**

Date 22/1/24

Decland Sheridan,
Meadown View Inn,
Dublin Road,
Cavan,
Co. Cavan

21 December 2023

Ref: 344

**Re: Declaration under Section V of the Planning and
Development Act 2000 (as amended)**

A Chara,

I wish to acknowledge receipt of your correspondence received in the Planning Office on 19 December 2023 in relation to Section V of the Planning and Development Act 2000 (as amended).

The Planning Authority wish to advise that your application is being reviewed and we shall be in further contact with you in due course.

Fee of €80 has been paid, receipt no. 33422278 refers.

Mise le meas,

Senior Staff Officer



Cavan County Council

**APPLICATION FOR DECLARATION UNDER SECTION V of the
PLANNING AND DEVELOPMENT ACT 2000 (as amended)**

Name of Applicant Declan Sheridan

Address of Applicant Meadow View Inn, Dublin Road, Cavan

Phone Number [REDACTED]

Name of Agent _____

Address of Agent _____

Location of proposed Development: Tirquin, Cavan, Co Cavan

Is this a Protected Structure or within the curtilage of a Protected Structure?

- ☐ Yes
☒ No

7. Description of Proposed Development The alteration and reduction in size of unauthorised existing boundary fencing subject to a ABP refusal 31569/23.

8. Applicant's interest in site: Adjoining landowner

Signed: Declan Sheridan

Date: 19/12/23



Declan Sheridan
Meadow View Inn
Dublin Road
Cavan

18th December 2023

**Re: Section V Planning Declaration Application
Alteration to existing unauthorised fence to reduce in height**

Dear Sir/Madam,

Please find enclosed the following documentation:

- Section V application form.
- Appropriate fee of €80
- Copies of photographs
- Site location map and site layout plan



I am making an application for a declaration on whether or not the alteration and reduction in height of an existing unauthorised fence is or is not exempted development. The adjoining landowner to my property, JB Trident Property Limited carried out works to the existing unauthorised fence (the subject matter of a refusal of permission 22/492 from An Bord Pleanála) along the boundary of my property.

Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended) ("Regulations") relates specifically to restrictions on exemption arising under the Regulations.

Article 9(1)(a)(viii) states that works that "*consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or structure the use of which is an unauthorised use*" shall not be exempted development.

Structure is defined in the Planning and Development Act 2000, as amended as "*any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –*". A fence therefore falls under the definition of structure for the purposes of any considerations under Section 5.

As you will be aware, the fence the subject matter of the application has been the subject matter of a number of applications for planning permission. JB Trident Property Limited originally applied for planning permission to retain a 2m height fence in July 2022 (Planning Reference 22/278). That planning permission was refused by Cavan County Council on 22 August 2022. A further application was then made to Cavan County Council on 6 December 2022 (Planning Reference 22/492). Planning Reference 22/492 was granted by Cavan County Council on 8 February 2023. That permission was appealed by me and by the neighbouring property owners, the Smiths to An Bord Pleanála. An Bord Pleanála refused permission for the fence on 26 June 2023. The unauthorised fence was not removed from the lands and is an unauthorised development/structure.

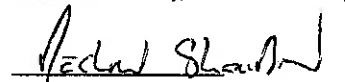
Therefore, any works to remove or alter an already unauthorised fence cannot rely upon the exempted development provisions under the Planning and Development Act 2000, as amended and requires planning permission. While works were carried out at the end of November 2023 to reduce the height of the existing unauthorised fence, the fence as originally constructed remains in situ. The works carried out is not the construction of a new fence, rather an alteration to an existing unauthorised fence.

Article 9(1)(a)(viii) states that works that "consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or structure the use of which is an unauthorised use" shall not be exempted development. Therefore, any works to remove or alter the already unauthorised fence cannot rely upon the exempted development provisions and an application for planning permission is required for any fencing works on the site.

A copy of the site layout plan and site location map submitted with the application for planning permission 22/492 is included. It identifies the location of the site and fencing on the site.

I look forward to your consideration and declaration under Section 5. If you have any queries or require any additional further information, please do not hesitate to contact me.

Yours faithfully,



Declan Sheridan



Declan Sheridan
Meadow View Inn
Dublin Road
Cavan

18th December 2023

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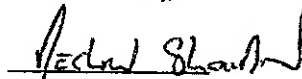
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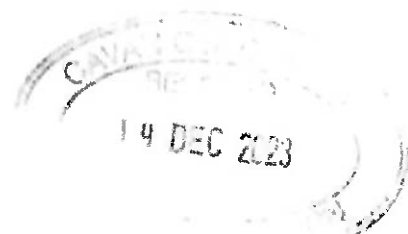
A copy of the site layout plan and site location map submitted with the application for planning permission 22/492 is included. It identifies the location of the site and fencing on the site.

I look forward to your consideration and declaration under Section 5. If you have any queries or require any additional further information, please do not hesitate to contact me.

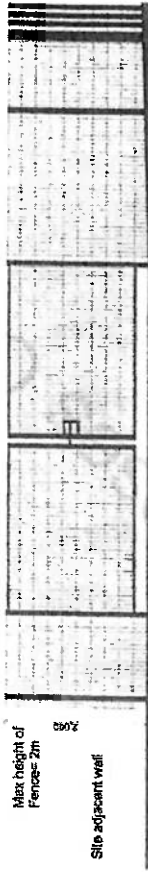
Yours faithfully,



Declan Sheridan



POWDER COATED GREEN WILD STEEL FENCE
TO PERIMETER OF BOUNDARY

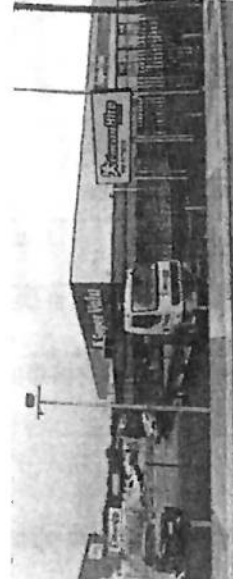


Typical Elevation of Fence

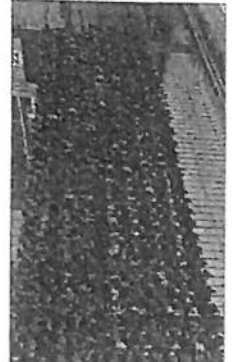
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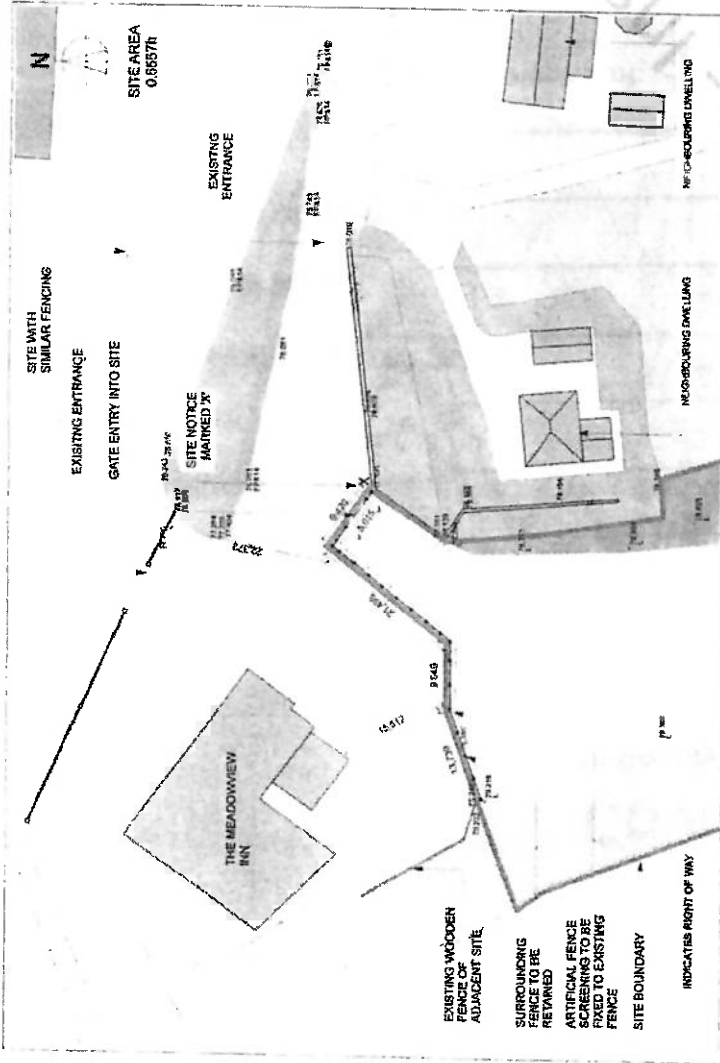
Photos of Existing perimeter fence to be retained



Similar existing perimeter fence opposite from site

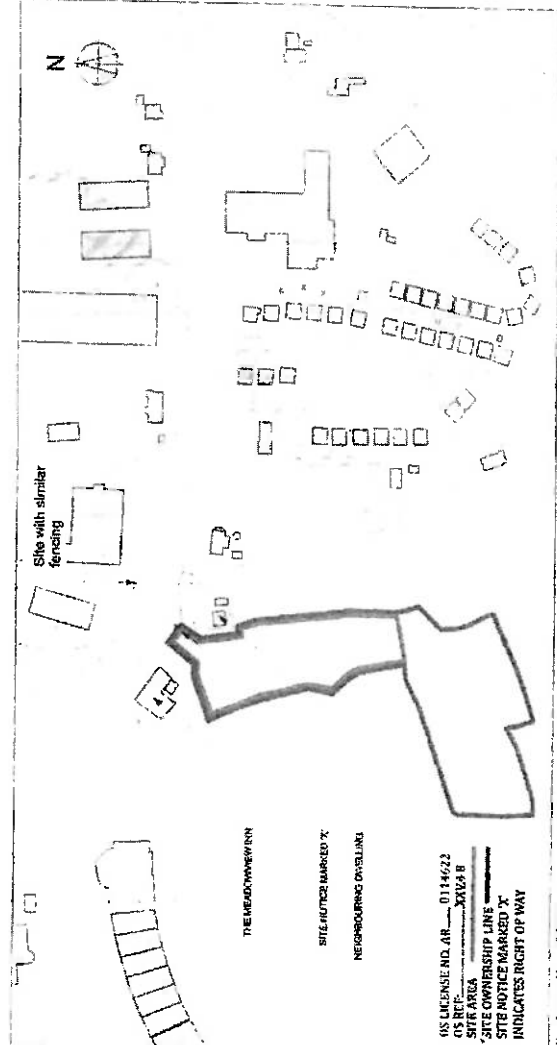


Proposed type of artificial fence screening



Site Layout Plan

1:500



Site Location Map

1:2500

Project No: 22151-001
Client: J.B. Triven Property Limited
Project Name: Proposed Development at Titirua, Cavan
Project Location: Co. Cavan
Project Status: P-01
Project Date: 10/01/2022

Michael Fitzpatrick
ARCHITECTS



PROPOSED DEVELOPMENT
PROPOSED DEVELOPMENT AT TITIRUA, CAVAN
CO. CAVAN FOR J.B. TRIVEN PROPERTY LIMITED
PLANNING DRAWING

Client: J.B. Triven Property Limited
Project Name: Proposed Development at Titirua, Cavan
Project Location: Co. Cavan
Project Status: P-01
Project Date: 10/01/2022

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Cavan County Council

**APPLICATION FOR DECLARATION UNDER SECTION V of the
PLANNING AND DEVELOPMENT ACT 2000 (as amended)**

Name of Applicant Declan Sheridan

Address of Applicant Meadow View Inn, Dublin Road, Cavan

Phone Number [REDACTED]

Name of Agent _____

Address of Agent _____

Location of proposed Development: Tirquin, Cavan, Co Cavan

Is this a Protected Structure or within the curtilage of a Protected Structure?

☐ Yes

☒ No

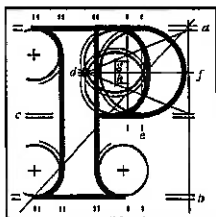
7. Description of Proposed Development The alteration and reduction in size of unauthorised existing boundary fencing subject to a ABP refusal 31569/23.

8. Applicant's interest in site: Adjoining landowner

Signed: Declan Sheridan

Date: 19/12/23





An
Bord
Pleanála

Inspector's Report

ABP-315969-23

Development	Retention of boundary fence / gate & all ancillary works and permission for modifications to existing fence & all ancillary works.
Location	Tirquin, Cavan, Co. Cavan.
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	22492
Applicant(s)	JB Trident Property Limited
Type of Application	Retention of permission and permission
Planning Authority Decision	Grant (temporary 3 year permission)
Type of Appeal	Third Party
Appellant(s)	Pat and Anna Smith Declan Sheridan.
Observer(s)	None
Date of Site Inspection	16/06/2023.

Inspector

Paul Caprani

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1.0 Introduction

- 1.1. This case relates to 2 no. 3rd party appeals against the decision of Cavan Co Council to grant retention of planning permission for a boundary fence and gate and to permission is sought for the modifications to the existing fence.

2.0 Site Location and Description

- 2.1. The subject site is located in the south-eastern environs of Cavan Town approximately 1 km from the town centre. It is situated to the south of the R212, the main road linking the N3/N55 interchange with the Town Centre. It is located to the west of the slip road running southwards from the R212. The boundary fence surrounding the site comprises of a c.2m high metal green clad structure and gate. The site is currently undeveloped. The fence partially encloses an area of approximately 0.655 Ha. There is a residential dwelling to the immediate north east of the site and there is a public house and associated car park to the immediately to the north of the site. There are no other structures in the immediate vicinity of the site.

3.0 Proposed Development

- 3.1. Retention of planning permission is sought for the boundary fence and gate. Planning permission is also sought for permission to modify the existing fence. Details regarding the modifications are not detailed in the planning application. It is assumed that the fence is to be extended around the entire site, although I cannot find any specific reference to nature of the modifications sought. Should the Board consider it appropriate to grant planning permission, it might consider seeking further details in this regard.

4.0 Planning Authority Decision

4.1. Decision

- 4.1.1. Cavan Co Council issued notification to grant planning permission subject to 3 conditions. Condition No. 2, restricted the permission for a period of 3 years from the date of the order. Condition No. 3 required that within 2 months of the grant of

permission, artificial screening shall be incorporated along the entire extent of the boundary fence.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The planners report notes that the site is governed by the zoning objective 'General Enterprise and Employment' and that there is adjoining residential or commercial development. It is considered that temporary fencing is acceptable having regard to the commercial zoning associated with the site provided that the developer be required to provide screening along the boundary and that the life of the permission is restricted to 3 years.

Planning permission was granted on this basis.

4.2.2. Other Technical Reports

None received.

4.3. Prescribed Bodies

None

4.4. Third Party Observations

Observations were received by both 3rd Parties. The content of these observations have been read and noted.

5.0 Planning History

5.1. Under Reg. Ref 22/278 Cavan Co Council refused planning permission for the retention of the same fence on the basis that the proposed development would have an adverse effect on the visual amenities of the area and would represent a haphazard piecemeal and disorderly development and would set an undesirable precedent for similar type development in the area.

5.2. Details of less relevant planning history is set out in the local authority planners report.

6.0 Policy Context

6.1. Development Plan

- 6.1.1. The site is governed by the policies and provision of the Cavan County Development plan 2022-2028. The site is zoned for 'General Enterprise and Employment uses'. This zoning seeks to facilitate opportunities for compatible industry and general employment uses, logistics and warehousing in a good quality physical environment. This should be highly accessible well designed permeable and legible.

6.2. Natural Heritage Designations

There are no designated European Sites in the vicinity of the subject site. The Lough Oughter and Associated Loughs SAC (site code 00007) are located are their closest point c 5 km to the northwest of the subject site.

6.3. EIA Screening

The development which is the subject of the application and appeal is not a class of development for which EIA is required.

7.0 The Appeal

7.1. Grounds of Appeal

The decision of the Council was the subject of 2 no. Third Party Appeals the grounds of which are set out below:

Appeal by Pat and Ann Smith

- This appeal was submitted by the residents of the adjoining dwelling. This objection raised concerns that the they were not being kept informed as to the progress of the application. The appellants are concerned that fence is impacting on their home in which they have resided for 40 years.

Appeal by Declan Sheridan

- This appeal argues that the fence for which retention of permission is sought is not in keeping with the immediate surrounding area. The proposed artificial fence screening is unacceptable and will set an undesirable precedent for similar developments in the area.
- Reference is made to Cavan Co Council's previous decision to refuse permission and it is argued that to simply add artificial screening does not satisfactorily address the visual amenity issues.
- The right of way shown on the drawing submitted is incorrect and does not accurately reflect the extant right of way as indicated on the property portfolios.
- The proposal is a health and safety risk to pedestrians and motorists frequenting the bar to the north.
- The lands are up for sale and the temporary permission is merely transferring the problems to a potential purchaser.
- There is no rational explanation for the council's U-turn in granting planning permission.

7.2. Applicant Response

The Applicant has not submitted a response to the grounds of appeal.

7.3. Planning Authority Response

A response from the Planning Authority stated the following;

- With regard to planning precedent, it is stated that each case should be determined on its merits.
- The artificial screening is considered to be acceptable at a site which is zoned for general enterprise and employment.
- The fence is permitted for a temporary period only.
- The fence is compatible with mixed uses along the Dublin Road. And the site presents an opportunity for development and any future development would offer an opportunity of a more acceptable boundary treatment.

On this basis it is respectfully suggested that the grant of planning permission be upheld for a period of 3 years.

7.4. Observations

- None

8.0 Assessment

8.1. I have read the entire contents of the file, visited the site and its surrounding, I have had particular regard to the planning authority's decision and the conditions attached to the decision. I have also had regard to the issues raised in both third-party appeals. I consider the critical issues in determining the current application and appeal are:

- Precedent decisions
- Visual Amenity Issues
- Right of way issues
- Health and safety issues.

Precedent Issues

8.2. It is clear from the planning history that Cavan Co Council refused planning permission for the retention of the same fence under reg. ref 22/278 on 12/08/2022. With the exception of the incorporation of some artificial screening to be appended to the fence, the proposal currently before the Board does not differ substantially from that refused by the planning Authority last year. There appears to be no material change in circumstances which would justify or warrant an overturning of the previous decision issued. It consider, notwithstanding proposed artificial screening in which it is proposed to clad the fence, the development for which retention of planning permission is sought, continues to represent haphazard, piecemeal and disorderly development and would continue to set an undesirable precedent along this section of the Dublin Road.

- 8.3. The purpose or rationale for the fence is not entirely explained or justified in my opinion. On inspecting the site, I noted that there were small adverts attached to the fence entitled "Fencing Matters – For all Your Fencing Needs" with a contact number (see photo 3 attached). Part of the rationale for erecting the fence may be for the purpose of advertising fencing products as opposed to prohibiting unauthorised parking. Appropriate signage, or planting which clearly and explicitly prohibits unauthorised parking, or a wooden post fence on the site would be sufficient and would be a more aesthetically pleasing alternative to ensuring that no unauthorised parking takes place on the site.

Visual Amenities

- 8.4. The previous decision by the planning authority considered the application for which retention of planning permission is sought would have an adverse impact on the visual amenities on this prominent approach to Cavan Town. It is my considered opinion, having visited the site, that there have been no material changes in the application which would warrant or justify a reversal of this conclusion. The provision of artificial leaf-like cladding along the fence will in no way ameliorate or improve the visual appearance of the structure to the extent that it would make it acceptable or satisfactory in visual terms. While I acknowledge that visual issues are somewhat subjective, I consider that a c.2m height metal fence with artificial leaf cladding would look somewhat incongruous and inappropriate on the site in question and would therefore do little or nothing to improve the visual amenities of the area.
- 8.5. The fact the the planning authority has limited the retention of the fence for a period of 3 years is in my view a tacit acknowledgment that the fence in question is inappropriate for the site in question. And on this basis, it is considered that the visual amenities of the area would be better served by the outright removal of the fence.

Right of Way Issues

- 8.6. Based on the limited information submitted with the application, the Board is not in a position to adjudicate as to whether or not the right of way is correctly depicted on the application drawings. Furthermore as indicated in the Development Management Guidelines for Planning Authorities (DOEHLG 2007), disputes in relation to land

ownership issues are a civil matter and therefore a matter for the Courts rather than the planning authority or An Bord Pleanála.

Health and Safety Issues

- 8.7. The retention of the fence does not in my view give rise to any significant health and safety issues which would justify or warrant a reason for refusal in this instance.

Permission for Modifications

- 8.8. As stated previously in my report, the planning permission sought under the current application for modifications, under than the application of artificial leaves to the fencing is not entirely clear. If the Board are minded to grant retention of planning permission in this instance, it might consider it appropriate to seek clarification on this matter.

9.0 Appropriate Assessment

- 9.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site (c.5km away), no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

10.0 Recommendation

- 10.1. Arising from my assessment above, I recommend that the Board overturn the decision of the planning authority and refuse retention of planning permission for the reasons and considerations set out below.

11.0 Reasons and Considerations

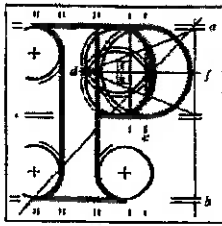
- 11.1. Having regard to the design and location of the fence for which retention of planning permission is sought, it is considered that the fence, notwithstanding the proposed artificial screening, would have an adverse impact on the visual amenities of the area on a prominent approach road to Cavan Town and would represent haphazard

piecemeal and disorderly development, would set an undesirable precedent and would therefore be contrary to the proper planning and sustainable development of the area.

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

Paul Caprani
Planning Inspector

June 18th 2023



**An
Bord
Pleanála**

**Board Order
ABP-315969-23**

Planning and Development Acts 2000 to 2022

Planning Authority: Cavan County Council

Planning Register Reference Number: 22/492

Appeal by Pat and Anna Smith of Tierquin, Dublin Road, Cavan and by Declan Sheridan of Meadow View Lounge, Dublin Road, Cavan against the decision made on the 8th day of February, 2023 by Cavan County Council to grant subject to conditions a permission to JB Trident Property Limited care of Michael Fitzpatrick Architects of Main Street, Butlersbridge, County Cavan.

Proposed Development: Retention of perimeter boundary fence/gate and all ancillary works carried out and permission for modifications to existing fence and all ancillary works at Tirquin, Cavan, County Cavan.

Decision

REFUSE permission for the above development based on the reasons and considerations set out below.

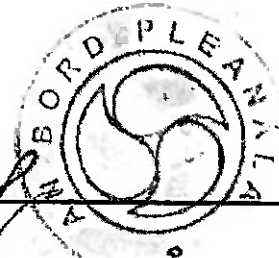
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Reasons and Considerations

Having regard to the design and location of the fence for which retention permission is sought, it is considered that, notwithstanding the proposed artificial screening, the development for which retention permission is sought would have an adverse impact on the visual amenities of the area on a prominent approach road to Cavan Town, would represent haphazard, piecemeal and disorderly development, would set an undesirable precedent, and would, therefore, be contrary to the proper planning and sustainable development of the area.


Oonagh Buckley

Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.



Dated this 20th day of June 2023.