



An
Bord
Pleanála

Inspector's Report ABP-321956-25

Development	Construction of a 1.8 metre high post and panel fence along the site's eastern boundary and all associated site works
Location	Ballymoneen Road, Ballyburke, Galway
Planning Authority	Galway City Council
Planning Authority Reg. Ref.	2460277
Applicant(s)	O'Malley Construction Company
Type of Application	Permission
Planning Authority Decision	
Type of Appeal	Third Party
Appellant(s)	Peter O'Halloran
Observer(s)	Tom Randles
Date of Site Inspection	19 th May 2025
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The appeal site comprises a narrow strip of land running along the eastern boundary of a housing estate which is currently under construction. The estate is called Maolchnoc and was permitted in October 2019. It is situated in the townland of Ballyburke, a short distance west of Galway city centre.
- 1.2. The site runs in a north – south direction and lies on the western side of another residential estate, which is Ard na Gaoithe. It is largely overgrown with dense vegetation, undergrowth and scrub. There are some construction materials also present.
- 1.3. The character of the area is mainly residential in nature and has experienced housing growth in recent years.
- 1.4. The full length of the site is roughly 210m.

2.0 Proposed Development

- 2.1. The proposed development is for the construction of a 1.8m high post and panel fence with a concrete finish.
- 2.2. The purpose of the fence is to provide an appropriate boundary between the two aforementioned housing estates.
- 2.3. The Planning Authority requested further information on 16th October 2024, including details concerning sufficient legal interest (Item 1), the positioning of the fence and its walls surrounding a cycle path (Item 2a), fence heights / measurements (Item 2b), and confirmation of specific access points to the cycle path from Maolchnoc (Item 2c), respectively.
- 2.4. The Applicant provided further information on 10th January 2025.

3.0 Planning Authority Decision

3.1. Decision

3.2. The Planning Authority issued a Notification of Decision (NoD) to Grant Permission on 4th February 2025, subject to one standard condition ('development to be carried out in accordance with the relevant plans and particulars').

3.3. Planning Authority Reports

3.3.1. Planning Reports

The main points raised are as follows:

- There is no particular issue with regards to such a wall/fence running along the rear of dwellings located within Ard na Gaoithe.
- However, the site plan and cross section submitted is somewhat unclear – this issue was addressed by the Applicant's further information response, which included a revised Proposed Site Layout Plan.
- The revised Proposed Site Layout Plan now clearly shows the location of the proposed fence and all walls surrounding the cycle path.
- No AA issues arising.
- No EIA issues arising.

3.4. Third Party Observations

The main issues raised are as follows:

- Access would be restricted as the objector owns part of the land which is proposed to be divided.
- Some residents support the provision of a boundary between Maolchnoc and Ard na Gaoithe housing estates citing security and public safety benefits.

4.0 Planning History

ABP Ref. 304762: An Bord Pleanála granted permission in October 2019 for the demolition of an existing house and associated outbuildings and the construction of 238 no. residential units (113 no. houses, 125 no. apartments), childcare facility and associated site works. This relates to Maolchnoc housing estate.

The permission also includes a public laneway to provide access between residential properties and connectivity for residents in the area. [The laneway comprises the area of land which is subject of this appeal case (ABP-321956-25).]

4.1. Galway City Development Plan 2023-2029

Background

4.1.1. The Galway City Development Plan 2023-2029 ('Development Plan' / 'CDP') sets out the policies and objectives for the development of Galway City over the plan period. The Elected Members of Galway City Council adopted the CDP at a Full Council Meeting held on the 24th November 2022.

4.1.2. The CDP came into effect on the 4th of January 2023.

Map-based Objectives

4.1.3. The site is zoned 'Residential (R)'.

4.1.4. The laneway is designated as being part of the 'Primary Cycle Network'.

Chapters

Chapter 3 Housing and Sustainable Neighbourhoods

Chapter 4 Sustainable Mobility and Transportation

Chapter 5 Natural Heritage, Recreation and Amenity

Chapter 8 Built Heritage, Placemaking and Urban Design

4.2. Galway Transport Strategy 2016

4.2.1. The Galway Transport Strategy (GTS) sets out a series of actions and measures, covering infrastructural, operational and policy elements to be implemented in

Galway over the next 20 years and sets out a framework to deliver the projects in a phased manner.

4.3. Natural Heritage Designations

4.3.1. No European designations apply to the site and there are none within its immediate vicinity. The nearest European Sites are as follows:

- Galway Bay Complex SAC (Site Code: 000268), which is roughly 1.4km to the south at its nearest point.
- Inner Galway Bay SPA (Site Code: 004031), which is roughly 1.5km to the south at its nearest point.
- Lough Corrib SAC (Site Code: 000297), which is roughly 3km to the northeast at its nearest point.

4.4. EIA Screening

4.4.1. 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.

4.4.2. Refer to Form 1 in Appendix 1 of report.

5.0 The Appeal

5.1. Grounds of Appeal

The main issues raised are as follows:

Legal Ownership and Public Right of Way

- Appellant states they are the legal owner of the land from the eastern boundary to the centre of the existing laneway.
- The Applicant has failed to demonstrate that a right of way (RoW) for landowners adjoining the laneway will be retained.

- The laneway provides access to the lands adjoining the Ragoon Road North to Ard Fraoigh, Clybaun Road South which is c. 1km in length (see appended image).

Impact on future planned Greenway

- The laneway was to form part of a new greenway (cycle route) in the current County Development Plan.
- The Applicant has failed to facilitate the access point to Ard na Gaothie as per Reg. Ref. 412/02 which is required for connectivity purposes.
- The natural stone should be retained and recycled as part of the boundary treatment (similar to Millars Lane at Ragoon) (see image).

Public Safety and Security

- A portion of the laneway will become unmanageable, overgrown and a dumping area and should instead be taken in charge by the Council to form part of the strategic greenway network.
- The appearance of the proposed fence is out of character with the area where the laneway is to be a greenway as a 1.1m high natural stone wall will be replaced with a 1.8m high concrete post and fence. This will promote graffiti and antisocial gatherings.

5.2. Applicant Response

The Applicant lodged a response with the Board. The main issues raised are as follows:

Legal Ownership and Public Right of Way

- A legal review of the relevant land folios including the appeal site (Folio No. GY49564) was conducted via Land Direct to confirm there is sufficient legal interest to carry out the proposed works.
- The portion of the laneway in question is within the Applicant's control and there is sufficient legal interest for them to carry out the development.

- The Appellant has not provided any documentary evidence showing a RoW exists in this location.

Impact on future planned Greenway

- The laneway will form part of a proposed future greenway.
- This has been previously confirmed during the condition compliance process for the Strategic Housing Development (SHD) permission which forms the parent permission for the adjacent housing development (See Condition 13 of ABP-304762).
- Condition No. 13 has been agreed with the Planning Authority.
- The laneway will be taken in charge as part of the future Greenway.
- The Applicant has confirmed with Galway City Council in writing that the greenway will have full public access, that the public will have full right and liberty of free passage and use of the pedestrian connection at all times.

Public Safety and Security

- There will be adequate overlooking to allow for passive surveillance. This will maximise safety and security of the laneway/cycleway.
- The rear gardens of Ard na Gaoithe and Maolchnoc both back onto the cycleway providing passive surveillance from nearby houses.
- There are 8 no. separate entrance points from the Maolchnoc housing development to the cycleway which will serve as a further means of deterring antisocial behaviour.
- The laneway is fully accessible to the public and will form part of the Connemara Greenway.
- Residents in Ard na Gaoithe have submitted letters of support for the proposed development to the Planning Authority (see Appendix 3 of response).

5.3. Observations

- Contests the assertion made by the appellant that they legally own part of appeal site ('laneway').
- The long-disused passageway is completely impassable due to being overgrown with dense vegetation.
- There is no existing laneway in this location and no-one, including the appellant, have been able to access this section of land for several years given the impenetrable nature of the vegetation that exists on it.
- Supports the proposed finishes and materials which would form part of the fence / wall.
- Requests the Board uphold the decision of the Planning Authority to grant permission.

6.0 Assessment

Having examined the application details and all other documentation on file, and inspected the site, and having regard to relevant local, regional, and national policies and guidance, I consider that the main issues in this appeal are as follows:

- Land Ownership
- Greenway
- Public Safety and Security

6.1. Land Ownership

- 6.1.1. The Appellant states that they are legal owner of part of the appeal site and that the Applicant has not secured the necessary legal consent to make the planning application. They also raise concerns that the construction of the proposed fence would prevent access to the existing laneway in certain locations and that existing rights-of-way have not been taken into account.
- 6.1.2. I note that an observation has been received from a resident in the area. The submission states that passageway is completely impassable due to being

overgrown with dense vegetation and has not been used or accessed in recent times for this reason. They are in favour of the proposed development and would like to see the wall constructed for reasons of safety, privacy and convenience.

- 6.1.3. The Applicant states in their response that they have conducted a legal review of the relevant land folios, including the appeal site (Folio No. GY49564). This exercise was completed using Land Direct which allows for searches to be undertaken of the Land Registry map online. The Applicant states that the portion of land in question is fully within the Applicant's control, and, for this reason, they have sufficient legal entitlement to make the application and complete the proposed works, if granted permission.
- 6.1.4. Having reviewed the information before me, I do not accept that the argument put forward by the Appellant raises sufficient doubt in terms of the legitimacy of the Applicant's legal interest in the site, or of their ability make the planning application. The Appellant has failed to provide any documentation to verify their alleged ownership or right-of-way over the property in question. I consider that the procurement of this information should be relatively straightforward, for example, via the Land Direct website (landdirect.ie), by retaining a property lawyer, or using another legal service. However, this has not happened, and the information required to substantiate the third party's claim has not been made available to the Board.
- 6.1.5. Furthermore, the Board cannot adjudicate on such matters relating to legal interest and property ownership issues. In this regard, I note the provisions of Section 34(13) of Planning and Development Act, 2000 (as amended) relating to 'Permission for Development'. Here, it states that 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'. Therefore, in the event permission is granted, there may be other legal considerations that apply, ones which the landowner may need to address outside of the planning system.
- 6.1.6. Section 5.13 of the Development Management Guidelines also states that the planning system is not designed as a mechanism for resolving disputes about title to land, or premises, or rights over land. These are ultimately matters for resolution in the Courts. However, the Applicant must be certain under civil law to ensure that they have all rights in relation to the land for which they intend to implement any grant of planning permission.

- 6.1.7. Having regard to this, I conclude that the application should not be refused on grounds relating to landownership or legal interest. I am also satisfied that the laneway will be made fully accessible to the public and note the Applicant's comments that it will form part of a planned greenway route for the benefit of the local community.

6.2. Greenway

Public Access to the Greenway

- 6.2.1. The Galway City Development Plan 2023-2029 states that greenways can facilitate active travel, promote a modal shift, and are an important recreational amenity. The CDP identifies that two greenways as part of the Council's proposed cycle network. The greenways are promoted in the Galway Transport Strategy 2016 and include the Connemara Greenway and Galway to Dublin Greenway. The former applies to the appeal site.
- 6.2.2. The site is a strip of land that is designated under the CDP zoning map as being part of the 'Primary Cycle Network' for Galway City. It is also part of the Connemara Greenway route. The Applicant has confirmed as part of their response that the laneway will form part of this cycle route, and they made specific provision for this as part of the previous SHD application. This application was permitted in October 2019 and comprises the under-construction residential estate directly west of the appeal site, Maolchnoc (ABP Ref. 304762 refers).
- 6.2.3. I consider that Condition 13 of ABP Ref. 304762 is relevant and requires that members of the public must have full right of free passage and use of the pedestrian connections to the greenway along the eastern boundary of the site. The condition states the following:

'Prior to the commencement of development, the developer shall submit to and agree in writing with the planning authority a written statement outlining that members of the public have full right and liberty for the free passage and use of the pedestrian connections to the Greenway at the eastern site boundary. This public right of way and walkway shall be completed in full and available for public use, prior to the occupation of the development.'

- 6.2.4. The Applicant has provided documentary evidence that they have progressed Condition 13 with the Planning Authority in terms of compliance and confirm that the greenway will be taken in charge by the Council at an appropriate future time. I note for the Board's attention the compliance letter submitted by the Applicant to the Council. The letter confirms the greenway (lane) will be fully accessible to the public (see Appendix 2). The appendix also includes a drawing entitled 'COM 13- Right of Way at Eastern Boundary' which illustrates the extent of the right of way which would be afforded to members of the public shaded in yellow.
- 6.2.5. Having regard to this, I am satisfied that the construction of the proposed fence along this stretch of the laneway would not impede public access. It would accommodate residents living in the adjacent residential estate (Ard na Gaoithe) in terms of allowing access to be gained to the greenway once constructed.

Materials and Finishes

- 6.2.6. The proposed development is for a concrete post and panel fence which would not be out of place in a residential area such as this. I am satisfied that the proposed materials and finishes to be used in the construction of the fence / wall would be appropriate for its receiving context. I do not consider that a bespoke or modified design would be necessary in this case, or that a higher-grade finish is necessarily warranted.
- 6.2.7. I note the comments of the third party which suggests there is an existing natural stone wall on the site. This was still partially intact during my site inspection despite the ongoing construction works nearby. The appeal includes an image of a similar stone wall in the area for illustrative purposes and infers that it should be replicated in in the case of the subject application. (See photograph appended to the rear of the appeal).
- 6.2.8. However, I do not consider that it would be necessary to retain the old stone wall as part of the new works and that the proposed post and panel fence is appropriate form of boundary treatment in this case. However, the Board may consider a condition requiring the Applicant to prepare a Resource Waste Management Plan (RWMP). The RWMP would help to ensure the efficient use of materials and resources and reduce waste at source as part of the future construction phase.

6.3. Public Safety and Security

- 6.3.1. I note the concerns raised by the Appellant in relation to public safety, security and potential for antisocial behaviour to take place by way of constructing a wall of this height, nature and spec in this location. However, I consider that the laneway would benefit from a good level of passive surveillance and overlooking from adjoining residential dwellings, both to the east and west of the site.
- 6.3.2. The rear gardens of Ard na Gaoithe face directly onto the lane and are within a short distance. There is also opportunity for the houses associated with Maolchnoc to provide views into the lane. This level of visibility and overhead views from surrounding dwellings of the space would therefore contribute positively to the overall safety and security of the area.
- 6.3.3. Furthermore, the laneway is intended to function as a greenway and to facilitate active modes of transport, such as walking and cycling. As noted above, it will remain fully open to all members of the public, thereby, promoting permeability and enhancing local connectivity for the surrounding vicinity. The laneway would be readily accessible from both housing estates to the east and west and I note that there would no less than eight separate entrance points from Maolchnoc over a distance of approximately 200 metres. This would further serve to deter antisocial behaviour by increasing activity, visibility, and the number of people frequently walking and cycling through the area.
- 6.3.4. In summary, I do not consider that there would be any unacceptable public safety or security issues arising on foot of the proposed development.

7.0 AA Screening

- 7.1. The subject site is not directly located within, or in close vicinity, to a European Site.
- 7.2. The nearest European Sites are as follows:
- Galway Bay Complex SAC (Site Code: 000268), which is roughly 1.4km to the south at its nearest point.
 - Inner Galway Bay SPA (Site Code: 004031), which is roughly 1.5km to the south at its nearest point.

- Lough Corrib SAC (Site Code: 000297), which is roughly 3km to the northeast at its nearest point.

7.3. The site is an established residential area. There is no direct hydrological pathway or ecological connection between the subject site and any of these European Sites.

The scale of works during the construction phase are also considered relatively small in scale and, given the location of the site in a serviced urban area, I consider that any construction surface water runoff would be effectively managed via the existing drainage system. Furthermore, the proposed development, as works comprising the construction of 1.8m high post and panel fence, would not generate any foul or surface water runoff during the operational phase.

7.4. Having regard to the nature and scale of the proposed development on these urban and serviced lands, the intervening land uses, and absence of a pathway to, and the distance from, any European site, no Appropriate Assessment issues arise.

Therefore, 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.

8.0 Recommendation

8.1. I recommend that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Galway City Development Plan 2023-2029, including the residential zoning objective of the site, and its designated status as part of the primary cycle network, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 10th January 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>Details of the materials, colours and textures of all the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.</p> <p>Reason: In the interest of sustainable waste management.</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.

Ian Boyle
Senior Planning Inspector

21st May 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-321956-25		
Proposed Development Summary	The proposed development is for the construction of a 1.8m high post and panel fence with a concrete finish. The purpose of the fence is to provide an appropriate boundary.		
Development Address	The site comprises a narrow strip of land on the eastern boundary of a housing estate (Maolchnoc) in the townland of Ballyburke, a short distance west of Galway city centre.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			
No	✓		
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			
No			

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes			

5. Has Schedule 7A information been submitted?		
No		Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: Ian Boyle

Date: 19th May 2025