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# An Bord Pleanála



## Inspector's Report

Ref.: PL28. 246638

Development: Concrete post and timber panel fence of approx. 2m high.

3 Ravenscourt, Skehard Road, Blackrock, Cork.

### **PLANNING APPLICATION**

Planning Authority: Cork City Council

Planning Authority Ref.: 16/36783

Applicant: E. Kingston

Type of Application: Permission for Retention

Planning Authority Decision: Refusal

### **APPEAL**

Type of Appeal: First Party v. Decision

Observers: Winifred Shinkwin

INSPECTOR: Robert Speer

Date of Site Inspection: 19<sup>th</sup> August, 2016

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## **1.0 SITE LOCATION AND DESCRIPTION**

1.1 The proposed development site is located at the entrance to a small cul-de-sac of two-storey terraced housing known as Douglas Hall Mews at the former junction of same with Skehard Road (the previous junction arrangement between Douglas Hall Mews and Skehard Road having been altered in 2013 as part of a road improvement scheme). It is situated between the gable end of No. 1 Douglas Hall Mews and a masonry wall that extends along the footpath bounding Skehard Road whilst the lands to the immediate west form the rear garden area of a recently developed dwelling house at No. 3 Ravenscourt. The site itself has been enclosed to the east through the erection of a concrete post and timber panel fence approximately 2m in height which serves to incorporate the lands into the rear garden area / curtilage of the adjacent property i.e. No. 3 Ravenscourt.

## **2.0 DESCRIPTION OF PROPOSED DEVELOPMENT**

2.1 The proposed development involves the retention of a section of concrete post and timber panel fencing (approximately 2m in height) that serves to partially enclose an area of open space at the entrance to the Douglas Hall Mews housing scheme and which has the effect of incorporating the said lands into the rear garden area / curtilage of the adjacent property to the immediate west at No. 3 Ravenscourt, Skehard Road, Blackrock, Cork.

## **3.0 RELEVANT PLANNING HISTORY**

### **3.1 On Site:**

PA Ref. No. 80/9619. Was granted on 19<sup>th</sup> December, 1980 permitting K. O'Shaughnessy & J. Coakley permission for a residential development at Skehard Road, Cork.

ABP Ref. No. RL28.RL3360. Was determined on 24<sup>th</sup> September, 2015 wherein it was held that the fencing and enclosure of a site and its use as a private garden at the corner of Douglas Hall Mews, Skehard Road, Cork, was development and was not exempted development.

### **3.2 On Adjacent Sites:**

PA Ref. No. 06/31244. Was granted on 12<sup>th</sup> December, 2006 permitting Grangefield Development Ltd. permission for the construction of 4 No. detached dwellings and all ancillary site development works, including the realignment of

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the existing internal access road and landscaping, in the grounds of a protected structure, at Ravenscourt House, Skehard Road, Cork.

### 3.3 On Sites in the Immediate Vicinity:

PA Ref. No. 09/34148. Application by Alan Gould for permission for the construction of a two storey dwelling house and all ancillary works at Douglas Hall Mews, Skehard Road, Blackrock, Cork. This application was withdrawn.

PA Ref. No. 09/34149. Was refused on 2<sup>nd</sup> December, 2009 refusing Colm Keohane permission for the construction of a two storey dwelling house and all ancillary site works, within the curtilage of Ravenscourt House (protected structure RPS 669), at Douglas Hall Mews, Skehard Road, Blackrock, Cork.

PA Ref. No. 10/34392 / ABP Ref. No. PL28.237729. Was granted on appeal on 14<sup>th</sup> June, 2011 permitting Alan Gould permission for the construction of a two-storey dwelling house and associated site works at Douglas Hall Mews, Skehard Road, Blackrock, Cork.

PA Ref. No. 16/36750. Was granted on 5<sup>th</sup> May, 2016 permitting Mary O'Sullivan permission for the demolition of an existing two storey dwelling house and the construction of a new two storey dwelling house, alterations to existing garage, all with associated landscaping and drainage alterations, at Blackwater House, No 8. Douglas Hall Avenue, Skehard Road, Cork.

PA Ref. No. 16/36882. Application by Eva Gould for permission for the construction of 3 No. residential dwellings and all associated ancillary development works at Douglas Hall Avenue, Skehard Road, Blackrock, Cork. Further information was requested by the Planning Authority on 6<sup>th</sup> July, 2016 and no decision has been made on the application to date.

## **4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION**

### **4.1 Decision:**

On 29<sup>th</sup> April, 2016 the Planning Authority issued a notification of a decision to refuse permission for the retention of the proposed development for the following reason:

- The application site constitutes open space which formed part of an executed planning permission for development of a residential estate and which was habitually open to or used by the public during the 10 years

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preceding the fencing and enclosure for recreational purposes. The fencing and enclosure of the application site and its use as a private garden serving a private dwelling house constitutes a material change in the use of the space habitually open to or used by the public for recreational purposes. The resultant loss of open space would contravene objective 11.7 of the 2015-2021 Cork City Development Plan and would seriously injure the visual and residential amenities of property in the vicinity. The development for retention therefore would be contrary to the proper planning and sustainable development of the area.

#### **4.2 Objections / Observations:**

A total of 2 No. submissions were received from interested parties and the principle grounds of objection contained therein can be summarised as follows:

- Although not zoned as 'public open space', the site in question has been habitually open to the public for in excess of 20 No. years and has been maintained by the residents of Douglas Hall Mews with occasional assistance from Cork Corporation.
- The existing dwelling houses within Douglas Hall Mews were purchased on the basis that the proposed development site was to be used as open space to serve the estate.
- The subject lands have been appropriated in breach of the planning process and should be returned to their original status.
- The visual impact of the fence proposed for retention is unacceptable and detracts from the surrounding area.
- The proposed development will result in the loss of an area of public open space with a consequential loss of recreational / residential amenity.
- The subject lands were originally approved as open space as part of the Douglas Hall Mews housing scheme and were never intended to be incorporated into the garden area of an adjacent dwelling house which was constructed some years later.

#### **4.3 Internal Reports:**

*Drainage Division:* No objection.

#### **4.4 Prescribed Bodies / Other Consultees:**

*Irish Water:* No objection subject to conditions.

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## **5.0 GROUNDS OF APPEAL**

The grounds of appeal are summarised as follows:

- The proposed development site was never clearly outlined as open space in the executed planning permission (i.e. PA Ref. No. 80/9619) and this is reflected in the Board's previous determination of ABP Ref. No. PL28.237729. In support of the foregoing, the Board is referred to Section 10.6 of the Inspector's Report prepared in respect of ABP Ref. No. PL28.237729 which states the following with regard to the relevant planning policy context:

*'It is noteworthy that the site is not designated as public open space in map 8 of the City Development Plan despite being contiguous with an area zoned 'sports grounds' and close to a large number of open areas variously zoned 'public open space' or 'sports grounds'. I conclude therefore that the planning authority has not established that the site was conditioned as public open space, was maintained and/or functioned as public open space or is zoned as public open space. Therefore policy 11.3 does not apply to it and this reason for refusal cannot be sustained'.*

- The Cork City Development Plan, 2015-2021 was adopted on 23<sup>rd</sup> March, 2015 and this clearly shows that the lands in question are not identified as 'open space' in direct contrast to that area of public open space located to the east of the existing houses in Douglas Hall Mews.
- Having regard to the planning history of the site in addition to the provisions of the current Development Plan for the area, it is apparent that the subject site was never classified as public open space. Furthermore, it is notable that all other green areas in the locality were clearly marked as open space, including adjacent parks and a large plot directly in front of the existing housing in Douglas Hall Mews.
- The subject site was acquired by the applicant on the basis that it was not identified as open space and an accompanying letter from the original site owner details that the site was never requested to be taken in charge or to have its status changed in any way. The land in question has always been in private ownership.
- The designation of the application site as an area of high landscape value is not considered to be relevant as it is proposed to invest in landscaping of the plot following the removal of substantial overgrowth and waste materials in addition to the repair of boundary walls.

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- The suggestion that the lands in question were '*habitually open and used*' for a period of 10 years prior to the erection of the existing fencing can be refuted in part. In this respect it is submitted that whilst a fence was not previously in place along the eastern boundary of the area in question, the legal owner of the land never relinquished any rights to the plot and maintained ownership of same. Indeed, the fencing of private land is not mandatory Irish law.
  - Chapter 11: '*Recreation (and Green) Infrastructure*' of the Cork City Development Plan, 2015 includes objectives which seek to secure the optimum quality of public open space in developments (e.g. Objective 11.2: '*Open Space Strategy*'). Section 16.62 states that public open space in all types of residential development should:
    - Be visually as well as functionally accessible to the maximum number of dwellings within the residential area;
    - Be adequately overlooked by residential units;
    - Integrate natural features (for example natural contours, outcrops of rock), where appropriate, as part of the open space;
    - Be viable spaces, linked together where possible, designed as an integral part of the overall layout and adjoining neighbouring communal open spaces;
    - Not include narrow pedestrian walkways, which are not overlooked by house frontages;
    - Create safe, convenient and accessible amenity areas for all sections of the community;
    - Generally no rear boundaries should face onto public open space.

The subject site does not satisfy the foregoing requirements on the basis of the following:

- It is visually accessible to only 1 No. dwelling house in Douglas Hall Mews.
- It is only partially overlooked by a single dwelling house to the side of same.
- It is not linked with any other space in the area i.e. it is not a viable space.
- It has a large side boundary with No. 1 Douglas Hall Mews and a rear boundary.
- It does not comprise a safe, convenient or accessible amenity area given the evidence of fly-tipping and anti-social behaviour.

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Accordingly, it is clear that the plot in question does not comply with the standards set by the Local Authority and therefore it cannot be considered a viable public open space. This is reinforced by the fact that the site has not been zoned as open space by the Local Authority despite it having had several opportunities to do so.

- The position adopted by the Planning Authority that there has been a material change in the use of the land in question acknowledges that the site is not zoned as public open space and that it was not designated as public open space in the original grant of planning permission.
- The following observations contained in the Board's previous assessment of ABP Ref. No. PL28.237729 are considered to be of relevance to the proposal under review:

*i) 'Whether the site was habitually open and used':*

The Planning Authority's assessment is invalid as it refers to the current condition of the site after it has been laid out and used as a private garden. It refers solely to photographs from 'Google Maps' and does not reference any single submission which would show it was used for active play / games. The space was not previously suitable or safe for use by residents for recreational purposes as it was not easily supervised and had significant areas of broken glass, overgrown scrub, briars and residual waste from fly-tipping.

*ii) 'The site is dominated by a number of native species including laurel and ash, scrub and ivy':*

The subject site is dominated by a mature lime tree and there were also significant trees along the northern site boundary. Prior to the laying out of the site as a private garden it was overgrown with briars etc. which left a relatively small area of grass remaining. This scrub etc. contributed to damage to the masonry wall that forms the northern boundary.

*iii) 'There is evidence of fly-tipping, particularly of garden waste':*

The accompanying photographs detail the extent of fly-tipping which previously occurred on site which is considered to be more

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significant than was referenced in ABP Ref. No. PL28.237729 as the dumped items included broken glass and builder's refuse.

- The Planning Authority has failed to provide any substantial proof of habitual use and has only referenced unattributed photographs obtained from the internet. In contrast, the accompanying photographs provided by the applicant show significant evidence of fly-tipping, unmanaged growth, trespass and anti-social behaviour on site.
- Whilst occasional grass-cutting served to enhance the appearance of the site as a passive amenity area, it was not habitually accessed or used by the residents of Douglas Hall Mews for recreational purposes.
- The photographs contained in the report of the case planner are not considered to be relevant as they simply show a newly cleared and planted area. The current status of the lands is that they are in use by the current site owner as private open space and an ornamental garden area.
- In addition to the existing public open space within Douglas Hall Mews, the private open space for each of the dwelling houses within the estate exceeds the recommended minimum requirement.
- The grass on the plot was occasionally cut with the permission of the owner, but that was the extent of any maintenance.
- Previously, there were many signs of dereliction on site which included a rapidly deteriorating boundary wall due to the unregulated growth of scrub trees. Indeed, this wall was damaged as a result of the unmanaged growth of several trees and thus posed a hazard to passing pedestrians.
- Whilst a single submission was received from a local resident, there has been no indication of any interest from any other residents of a willingness to pay for remediation works that may be required. Instead, the plot holds no interest for the majority of the residents of Douglas Hall Mews due to its unsuitability as an open space. In addition, the large lime tree on site may require maintenance and insurance cover over its lifetime which would not seem to be supported by the residents of Douglas Hall Mews.
- The following works have been carried out to date by the current site owner:
  - The on-going maintenance and protection of those trees which are of amenity value and also vulnerable to storm damage and vandalism.
  - The erection of the fencing in order to prevent anti-social behaviour thereby addressing the nuisance and security concerns of adjacent residents.



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- The creation of an enhanced recreational amenity for the owners of the property in question which is landscaped with managed planting and is subject to regular maintenance.

These benefits have been achieved without significantly reducing the value of the site as a passive visual amenity for local residents. Hedging has been planted which will mature over the next few years thereby providing additional cover to the fence whilst the existing lime tree remains part of the landscape.

- The decision of the Planning Authority to refuse permission for the subject proposal is an attempt to remove effective control over private property.
- The refusal of the retention of the existing fencing on the basis that there was no fence in place previously is unjustified.

## **6.0 RESPONSE TO GROUNDS OF APPEAL**

### **6.1 Response of the Planning Authority:**

- It is reiterated that it has already been established by An Bord Pleanala in its determination of ABP Ref. No. RL28.RL3360 that the lands in question were habitually open to or used by the public for recreational purposes during the 10 No. years preceding the erection of the fencing and the enclosure of the site. Furthermore, the fencing and enclosure of the application site with its subsequent use as a private garden area serving a private dwelling house is considered to comprise a material change in the use of the space which was previously habitually open to or used by the public for recreational purposes.
- The Planning Authority has carried out its duties in accordance with the relevant legislative provisions and its decision to refuse permission for the proposed development is consistent with the Cork City Development Plan, 2015-2021 and is also in the interests of the proper planning and sustainable development of the area.

## **7.0 OBSERVATIONS**

### **7.1 Winifred Shinkwin:**

- The lands in question have been available to the residents of Douglas Hall Mews and have been habitually used and maintained as public open space.

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- The enclosure of the subject site and its incorporation into the curtilage of a private dwelling house is fundamentally different to the purpose for which the lands were previously used i.e. as public open space used for recreational purposes. This is supported by:
    - The grant of planning permission issued in respect of PA Ref. No. TP80/9169 which identified the lands in question as open space.
    - A statement given by the Senior Executive Parks Superintendent of the Local Authority which asserts that the application site has been habitually open to or used by the public for recreational purposes for at least 10 No. years (as was referenced in ABP Ref. No. RL28.RL3360). This statement also confirms that the lands in question had been maintained as open space by local residents with assistance at times from Cork City Council.
    - The Inspector's Report prepared in respect of the Board's assessment of ABP Ref. No. RL28.RL3360.
  
  - The proposed development will result in the loss of both recreational and residential amenity to established housing in the surrounding area.
  - The submitted proposal will have a detrimental impact on the amenities and character of both the application site and the existing housing estate which has already lost significant elements of public open space.
  - The proposed development will set an undesirable precedent as regards the potential redevelopment of similar lands within the Cork City area.

## **8.0 DEVELOPMENT PLAN**

### **Cork City Development Plan, 2015-2021:-**

#### **Land Use Zoning:**

The proposed development site is located in an area zoned as '*Residential, Local Services and Institutional Uses*' with the stated land use zoning objective '*To protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3*'.

#### ***Explanatory Note: 'Residential, Local Services and Institutional Uses':***

The provision and protection of residential uses and residential amenity is a central objective of this zoning, which covers much of the land in the suburban area. However other uses, including small scale local services, institutional uses and civic uses and provision of public infrastructure and utilities are permitted, provided they do not detract from residential amenity and do not conflict with the

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employment use policies in Chapter 3 and related zoning objectives. Small scale 'corner shops' and other local services such as local medical services, will be open for consideration. Schools, third level education institutes, and major established health facilities are located within this zone and appropriate expansion of these facilities will be acceptable in principle. The employment policies in Chapter 3 designate particular locations for offices, office based industry, major retailing development and these uses are not generally permitted in this zone (Chapter 3: Enterprise and Employment). New local and neighbourhood centres or expansion of same are open for consideration in this zone provided they meet the criteria for such centres set out in Chapter 4.

*Other Relevant Sections / Policies:*

*Chapter 6: Residential Strategy:*

*Objective 6.1: Residential Strategic Objectives:*

- a) To encourage the development of sustainable residential neighbourhoods;
- b) To provide a variety of sites for housing to meet the various needs of different sections of the population;
- c) To continue to work with the Approved Housing Bodies and to actively engage with all key stakeholders in the provision of housing;
- d) To continue to regenerate and maintain existing housing;
- e) To encourage the use of derelict or underused land and buildings to assist in their regeneration;
- f) To promote high standards of design, energy efficiency, estate layout and landscaping in all new housing developments;
- g) To protect and, where necessary, enhance the amenities and the environment of existing residential areas.

*Chapter 10: Landscape and Natural Heritage*

*Objective 10.1: Landscape Strategic Objectives:*

To preserve and enhance Cork's landscape character and key landscape assets.

To preserve and enhance Cork's views and prospects of special amenity value.

*Objective 10.2: Cork City Landscape:*

To preserve Cork's unique and distinctive landscape character through the appropriate management and

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enhancement of Key Landscape Assets, (as set out in Table 10.1).

*Objective 10.4: Areas of High Landscape Value:*

To conserve and enhance the character and visual amenity of Areas of High Landscape Value (AHLV) through the appropriate management of development, in order to retain the existing characteristics of the landscape, and its primary landscape assets. Development will be considered only where it safeguards to the value and sensitivity of the particular landscape. There will be a presumption against development where it causes significant harm or injury to the intrinsic character of the Area of High Landscape Value and its primary landscape assets, the visual amenity of the landscape; protected views; breaks the existing ridge silhouette; the character and setting of buildings, structures and landmarks; and the ecological and habitat value of the landscape.

*Chapter 11: Recreational Infrastructure:*

*Objective 11.7: Public Open Space:*

- a) To protect, retain, improve and provide for areas of public open space for recreation and amenity purposes. There will be a presumption against development of land zoned public open space for alternative purposes;
- b) There will be presumption against development on all open space in residential estates in the city, including any green area/public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation/amenity open space, and also including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes;
- c) To promote public open space standards generally in accordance with national guidance contained in Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (DEHLG, 2009)

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and the accompanying Urban Design Manual – A Best Practice Guide;

- d) The development of open spaces should aim to enhance and protect natural features and views and be set in safe and secure environments with the emphasis on active open spaces accessible to and enjoyed by all sectors of the community;
- e) To follow an approach of qualitative as well as quantitative standards for open spaces providing high quality open spaces with high levels of access to recreation for local communities;
- f) Specific design outcomes should be framed in relation to the nature of spaces being created or enhanced (e.g. in relation to maintenance, nature exposure and connectivity, strategic landscape and social role).

#### *Chapter 16: Development Management*

### **9.0 ASSESSMENT**

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Visual impact
- Appropriate assessment

These are assessed as follows:

#### **9.1 The Principle of the Proposed Development:**

9.1.1 The proposed development involves the retention of a section of concrete post and timber panel fencing (approximately 2m in height) that serves to partially enclose an area of open space at the entrance to the Douglas Hall Mews housing scheme which in turn has the effect of incorporating said lands into the rear garden area / curtilage of the adjacent property to the immediate west at No. 3 Ravenscourt, Skehard Road, Cork. Accordingly, whilst I would accept that the subject application relates solely to the retention of the existing fencing as set out in the description of the proposed development contained in the public notices, in my opinion, it is clear that the key issue in the determination of this appeal is

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whether or not the incorporation of the application site into the rear garden area / curtilage of the adjacent dwelling house as a direct consequence of the erection of the fencing would be acceptable in principle. Indeed, the decision of the Planning Authority to refuse permission for the retention of the existing fencing is based on the assertion that the proposal will seriously injure the visual and residential amenities of property in the vicinity as a result of the loss of an area of open space that previously formed part of an executed planning permission and which was habitually open to or used by the public for recreational purposes during the 10 No. years preceding the enclosure of same by the fencing in question. Therefore, in order to properly assess the overall impact of the proposed development, it is necessary in the first instance to review the background of the application site, with particular reference to its planning history and the historical usage of those lands which will be subsumed into the rear garden area of the adjacent property.

9.1.2 Whilst the grounds of appeal have made repeated references to the Board's previous determination of ABP Ref. No. PL28.237729 in support of the applicant's claim that the lands presently enclosed by the fencing proposed for retention were not clearly identified as open space in the executed grant of planning permission for the Douglas Hall Mews housing development ((i.e. PA Ref. No. 80/9619) and are not zoned as public open space in the current Development Plan for the area, I would advise the Board that an in-depth consideration of the usage of this specific area of 'open space' was more recently undertaken in the assessment of ABP Ref. No. RL28. RL3360 wherein it was held that *'the works undertaken consist of the fencing and enclosure of land habitually open to or used by the public during the 10 years preceding the fencing and enclosure for recreational purposes'* and that *'the fencing and enclosure of the land and its use as a private garden serving a private dwelling house constitutes a change of use which is considered to be a material change of use of the space habitually open to or used by the public for recreational purposes'*.

9.1.3 At this point, I propose to provide a brief summation of the findings of the reporting inspector in their assessment of ABP Ref. No. RL28. RL3360. In that instance it was noted that the housing scheme known as Douglas Hall Mews was developed pursuant to a grant of permission issued under PA Ref. No. TP80/9619 and that the site layout plan dated March, 1981 showed the subject site with trees thereon thereby suggesting it could be construed as comprising open space. In addition, reference was made to Drg. No. 222-03 dated March, 1984 which clearly delineated the site in question as 'open space' although the

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report also acknowledged that an earlier assessment prepared in respect of ABP Ref. No. PL28.237729 (which concerned the proposed development of a dwelling house on 'open space' to the immediate south of housing within Douglas Hall Mews) had stated that it was 'inconclusive' whether or not the lands in question had been conditioned as public open space under the grant of permission issued for PA Ref. No. TP80/9619. With regard to the fact that the lands were not taken in charge by the Local Authority and were not zoned as open space in the current City Development Plan unlike other spaces within the same estate, it was the opinion of the reporting inspector that these matters did not necessarily confirm that the space was not 'open space'. It was further noted that the space in question had been kept free from development and was open to Douglas Hall Mews whilst OSi aerial photography of the area in 2000 showed the site within the completed housing estate thereby supporting the case that the open nature of the space had been in existence of a period of time in excess of 10 No. years. Further credence was lent to the use of the lands as 'open space' by reference to a letter from the Senior Executive Parks Superintendent of the City Council which confirmed that the space had been maintained as an open space by local residents and, at times, by the City Council, with imagery from 'Google Streetview' dated 2009 showing the open nature of the site with grass cut. Accordingly, the reporting inspector concluded that, on the balance of the evidence before the Board, the subject site had been habitually open to the public for recreational purposes and that whether or not the space was used by children or for anti-social purposes was not relevant to the assessment of the referral.

9.1.4 Having considered the available information, I would concur with the findings of the Board as regards its determination of ABP Ref. No. RL28. RL3360 in that the subject lands were habitually open to or used by the public for recreational purposes during the 10 No. years preceding the erection of the fencing proposed for retention and the subsequent enclosure of the lands. In my opinion, the grounds of appeal do not contain any significant new information which would warrant a reversal of the foregoing position and I would suggest that details such as the applicant's ownership / acquisition of the site in recent years does not detract from the historical usage of the site as open space.

9.1.5 Having established that the application site comprises lands which were previously habitually open to or used by the public for recreational purposes, the issue arises as to whether or not the loss of this open space through its amalgamation with the rear garden area of No. 3 Ravenscourt would be otherwise acceptable in terms of the proper planning and sustainable

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development of the area. In this respect I would refer the Board at the outset to Objective 6.1: *'Residential Strategic Objectives'* of the Cork City Development Plan which aims *'To protect and, where necessary, enhance the amenities and the environment of existing residential areas'*. In my opinion, the loss of the area of open space in question consequent on the proposed retention of the existing fencing would seem to deprive the residents of nearby housing (with specific reference to Douglas Hall Mews) of a valuable amenity area which contributes both physically and visually to the existing scheme of housing in terms of providing for informal and passive amenity uses. In further support of the retention of the existing 'open space', Objective 11.7: *'Public Open Space'* of the Development Plan specifically states that there will be a *'presumption against development on all open space in residential estates in the city, including any green area / public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation / amenity open space, and also including land which has been habitually used as public open space'*. Indeed, any such lands are required to be protected for recreation, open space and amenity purposes. Whilst I would concede that the existing open space is not ideally located in terms of its siting relative to surrounding housing, particularly in terms of passive supervision / observation, and although it may have previously been used for illegal dumping or other anti-social activities, I am inclined to conclude that the merits of retaining the area in question as open space outweigh the foregoing concerns given its contribution to the visual and residential amenities of those properties within Douglas Hall Mews. Accordingly, it is my opinion that the retention of the existing fencing, and the associated loss of an area of open space through its incorporation into the rear garden area / curtilage of an adjacent private residence, would contravene the foregoing provisions of the Cork City Development Plan which seek to preserve such lands in the interest of residential amenity and, therefore, would be contrary to the proper planning and sustainable development of the area.

### **9.2 Visual Impact:**

9.2.1 The proposed development site is located at the entrance to Douglas Hall Mews and whilst the overall appearance of the fencing proposed for retention is somewhat out of character with the surrounding pattern of development, I would accept that the hedging which has been planted along that side of the fencing which fronts onto the adjacent service road will serve to screen same over time.

9.2.2 With regard to the site location in an *'Area of High Landscape Value'* where it is the stated objective of the Planning Authority to conserve and enhance the character and visual amenity of such areas through the appropriate management



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of development in order to retain the existing characteristics of the landscape and its primary landscape assets, given the site context and the limited scale of the development proposed, it is my opinion that the subject proposal will not be visually intrusive and will not unduly detract from the inherent character of the wider landscape.

**9.3 Appropriate Assessment:**

9.3.1 Having regard to the nature and scale of the development proposed for retention, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development proposed for retention would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

**10.0 RECOMMENDATION**

Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

**Reasons and Considerations:**

1. Having regard to the planning history of the site, in particular, the use of the site as open space serving the overall development granted under planning authority register number TP80/9619, and which was previously habitually open to or used by the public for recreational purposes, it is considered that the enclosure of the site as a result of the fencing proposed for retention would contravene Objective 11.7 of the Cork City Development Plan, 2015-2021 and would seriously injure the visual and residential amenities of property in the vicinity by reason of the loss of open space. The development proposed for retention would, therefore, be contrary to the proper planning and sustainable development of the area.

Signed: \_\_\_\_\_

Robert Speer  
Inspectorate

Date: \_\_\_\_\_

