



An
Bord
Pleanála

Inspector's Report PL17.246868

Development	Construction of 6 no. houses, extension to the estate road and all associated site works at Tudor Grove, Ashbourne, Co. Meath.
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	AA/151349
Applicant(s)	Quarrycross Limited
Type of Application	Permission
Planning Authority Decision	Refuse
Appellant(s)	1. Quarrycross Limited
Observer(s)	1. None
Date of Site Inspection	9 th October 2016
Inspector	Fiona Fair

1.0 **Site Location and Description**

- 1.1. The appeal site is located to the north west side of Ashbourne town centre, County Meath. The site is accessed via the Tudor Grove / Heights Estates east from the N2, Slane Road, in the northern suburb of Ashbourne town. The access road is located adjoining the entrance to St. Marys National School at the end of a short cul-de-sac.
- 1.2. The Tudor Grove Estate comprises a small cul-de-sac development of 18 semidetached two storey houses. At the west end, there is a pedestrian access to Race Lane. The subject appeal site is situated to the east side of No. 18 Tudor Grove on an area of rough unmaintained / unused open land. The appeal site, of some stated 0.26527 ha, comprises roughly a quarter of the overall un-maintained open land at this location. The ground level of the site is slightly elevated from the Tudor Heights Estate.
- 1.3. The western boundary of the lands with Tudor Heights comprises a timber post fence. The lands are open to the east. There is a tree lined boundary to the school to the south, hedgelines further east where an estate approaches from that direction and a mature hedgeline boundary to the north with Racehill Close Estate.

2.0 **Proposed Development**

- 2.1. The development will consist of the construction of:
 - 6 no. two storey 4 bedroom, semi-detached houses,
 - Extension of the estate road,
 - All associated services,
 - Service connections, landscape, boundary treatment and site development works.

3.0 Planning Authority Decision

3.1. Decision

Meath County Council refused planning permission for two number reasons:

Reason No. 1 considers that the proposal would materially contravene the public open space provision requirements for residential development in the Meath County Development Plan 2013 – 2019 (Section 11.2.2.20 and the Ashbourne Local Area Plan (LAP) (Section 6.6.1) which requires that Public Open Space shall be provided for residential developments at a maximum of 15% of total site area.

Reason No. 2 The proposed development would materially contravene Policy SOC POL 39 and SOC POL 42 of the Meath County Development Plan 2013 – 2019 and Policy SOC POL 16 of the Ashbourne LAP.

3.2. Planning Authority Reports

The report of the area planner can be summarises as follows:

Following a request for further information with respect to (1a) justification of the proposal for housing on lands that are subject of a deed of dedication or identified in a planning permission as open space to ensure the availability of community and recreational facilities for the residents of the area (1b) applicant requested to submit details for public open space in accordance with CDP policy (2) documentary evidence demonstrating ownership of the site (3) letter of consent from relevant landowner allowing access of the existing estate road in Tudor Grove (4) water supply servicing / infrastructure (5) wastewater infrastructure and design (6) collection, treatment and disposal of surface water drainage, it was concluded that in the absence of the provision of any public open space and given the subject site forms part of lands identified for open space under Phase 4 of the Tudor Grove housing scheme, Reg. Ref. 941258/PL17.096766, permitting the proposal in its current form would be contrary to DOC POL 42 of the Meath CDP 2013 and should be refused.

3.3. Other Technical Reports

3.3.1. **Road Design:** No objection.

3.3.2. **Water Services:** No objection subject to condition.

3.3.3. **Irish Water:** No objection subject to condition.

3.4. Third Party Observations

Representation made opposing the proposed development.

4.0 Planning History

4.1. PL17.096766 Talara Homes was granted planning permission for Phase IV of Tudor Grove residential scheme in 1995 (comprising 18 no. two storey semidetached dwellings).

4.2. I note the Planners report states: DAEX1514: David Byrne was granted an exemption certificate pursuant to Section 97 of the Planning and Development Act for the provision of six dwellings on the subject site.

5.0 Development Plan

The appeal site is zoned A1, 'To protect and enhance the amenity of developed residential communities' in the Meath County Development Plan 2013 – 2019 and the Ashbourne Local Area Plan (LAP) 2009 – 2015.

Chapter 11 of the CDP outlines Development Management Guidelines and Standards

Section 11.2.2 'Houses' is of relevance.

SOC POL 39 states: 'To resist the loss of existing public open space, unless alternative recreational facilities are provided in a suitable location'.

SOC POL 42 states: 'To maintain free from development lands that are subject of a deed of dedication or identified in a planning permission as open space to ensure the availability of community and recreational facilities for the residents of the area'.

The following Policy of the Ashbourne LAP 2009 – 2015 is of significance.

SOC POL 16 which states: 'No residential development shall be permitted on lands that are subject of a deed of dedication or identified in a planning application as open space to ensure the availability of community and recreational facilities for the residents of the area'.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

6.1.1. Zoning

- The subject lands are currently zoned A1 Residential
- They had previously been zoned F1 Open Space
- The lands were rezoned by way of the Ashbourne LAP 2009 for residential development including the provision of a community facility.
- The granting of the current application would be consistent and in accordance with the intention and objectives of the re-zoning
- The site is located within an established housing development and area and is the last remaining portion of A1 zoned lands undeveloped.
- In rezoning these lands to A1 and G1 from F1 the local authority clearly identified them as not public open space.

6.1.2. Land Use

- The lands have never been used for recreational amenity and do not act as public open space for previous developments
- Area is susceptible to anti – social behaviour
- A grant of permission would ensure passive surveillance for both the school and the residential communities in close proximity
- The applicant and landowner are not aware of any deed of dedication, acquiring the lands based on their clearly identified and stated zoning objectives

6.1.3. Public Open Space Provision

- Adjoining undeveloped lands are zoned G1 and are in the ownership of the applicant
- It is the intention of the applicant to develop adjoining lands to include open space and recreational use in the future subject to a successful application
- One of the possible options for this future development is a nursing home which is supported by the ‘G1’ Zoning, ‘To Provide for necessary community social and educational facilities.’
- Granting of the subject application will facilitate the future delivery of open space and recreational uses
- The open space provision of 15% requirement on an infill site of this nature is not practical and would result in an open space of minimal and impractical size
- A schematic Layout, which did not form part of the application, was submitted for information purposes.

- Adjoining lands will provide a qualitative, appropriately located and functional open space which will benefit all adjoining lands and users.

6.1.4. Appeal accompanied with:

- A2 Schematic Drawing @ 1:100 Drg. No. 2015 17 SK 101
- Copy of submission prepared by Tom Philips & Associates Town Planners, dated 2008. Which preceded the rezoning of the lands to residential use.

6.2. Planning Authority Response

The response from the planning authority is summarised as follows:

- No public open space has been provided as part of the scheme.
- A commitment to provide open space in the future as part of another planning application is not adequate.
- There is no planning gain associated with the application as submitted.
- The proposal is contrary to SOC POL 42 and SOC POL 39 of the Meath CDP 2013

7.0 **Assessment**

7.1. I consider the key issues in determining this appeal are as follows:

- **Planning History**
- **Principle of the Development on the Site**
- **Non-Compliance with Policy**
- **Undesirable Precedent**
- **Appropriate Assessment**

7.2. **Planning History**

Planning permission was granted on the subject appeal site for a housing development comprising 18 number semidetached dwellings in 1995 on foot of Reg. Ref. 94/1258 / PL17.096766. The specific area of land the subject of this appeal application formed the area delineated as public open space, as per the requirements of the Meath County Development Plan 1994.

I note that Reg. Ref. 94/125 was subject to a first party appeal against condition number two, only. Condition number two, which required that dwellings 1 – 2 and 15 – 18 be omitted, was deleted by the Board by way of PL17.096766.

Condition 3 of Reg. Ref. 94/1258 states: *'The open space to be provided shall be finished to the satisfaction of the planning authority and agreed in writing prior to the occupation of the first dwelling house.'* While the 18 number houses named locally as Tudor Grove were developed the public open space area was never landscaped and planted and currently comprises unkempt and unused open lands.

The appeal lands having previously been zoned 'F1' 'Open Space' are currently zoned 'A1' 'Residential' having been rezoned by way of the Ashbourne LAP 2009.

7.3. Principle of the Development on the Site

It is the contention of the first party that the granting of the current application for 6 number houses would be consistent and in accordance with the intention and objectives of the re-zoning.

The rezoning of the lands from F1 'Open Space' to A1 'Residential is somewhat ambiguous regard being had that the subject site was earmarked as public open space as per the conditions attached to the grant of planning permission under Reg. Ref. 94/1258 / PL17.096766. There appears to be no subsequent planning history which has materially altered or revoked this condition. While the condition may be unenforceable, due to the intervening time period which has elapsed, it remains a fact that the site in question was intended to provide public open space to serve the development in question and this open space was considered to be an integral part and indeed a requirement on which the basis to grant planning permission was predicated.

Not only does the subject appeal proposal intend to build upon an area earmarked as public open space it also does not include any public open space as part of the proposed scheme. I wholly agree with the planning authority that a commitment to provide open space in the future as part of a subsequent planning application is not acceptable.

From my site inspection it is evident that the estate suffers from a lack of useable or incidental public open space. The first party's contention that a grant of permission for the subject application would facilitate the future delivery of open space and recreational uses is in my opinion contrary to good planning principles and should not be entertained.

The first party argues that the proposal complies with policies to efficiently utilise zoned and serviced land in terms of providing new housing. This is a reasonable point, however, this needs to be balanced against the need to provide adequate open space in residential developments particularly where the planning authority has originally sought that the lands in question would be used for open space purposes.

Furthermore the residents of the existing development can be forgiven for having a reasonable expectation that the subject site would be developed for open space purposes having regard to the planning authority condition no 3 in respect of Reg. Ref. 94/1258 / PL17.096766. Houses within the estate, particularly houses in close proximity to the subject site may have been purchased on the understanding that the lands in question would be kept free from development and developed as public open space.

7.4. **Non-Compliance with Policy**

I note for the attention of the Board that both of the reasons for refusal by the planning authority, Reg. Ref. AA15/1349, state that the proposal would materially contravene policies and the public open space provision requirements for residential developments contained in the Meath County Development Plan 2013 – 2019 and the Ashbourne LAP 2009.

The first party submits that the lands are not subject to a deed of dedication and I see no evidence to suggest that they are. It is clear, however, that the proposed development seeks to develop an existing open area of land indicated for use as open space in Reg. Ref. 94/1258 / PL17.096766 and no area of public open space to serve the proposed or existing houses is included in the development.

I agree with the planning authority that permitting the proposal would be contrary to County Development Plan policy specifically SOC POL39 which states: *'To resist the loss of existing public open space, unless alternative recreational facilities are provided in a suitable location'* and SOC POL 42 which states: *'To maintain free from development lands that are subject of a deed of dedication or identified in a planning permission as open space to ensure the availability of community and recreational facilities for the residents of the area'*.

The proposal is also contrary to policy SOC POL 16 of the Ashbourne LAP 2009 – 2015 which states: *'No residential development shall be permitted on lands that are subject of a deed of dedication or identified in a planning application as open space to ensure the availability of community and recreational facilities for the residents of the area'*.

The proposal is also contrary to section 11.2.2.2 of the Meath CDP 2013 – 2019 and section 6.6.1 of the Ashbourne LAP 2009 which requires that '*Public open space shall be provided for residential development at a minimum of 15 % of total site area.*'

Cognisance being had to the change in zoning of the site, it being currently zoned A1 'Residential', to the purported future commitment by the first party, that a grant of planning permission for the subject development, would facilitate the future delivery of open space and recreational uses on adjoining lands within the ownership of the applicant and to the current Government Policy to address the housing shortage in the Country, I recommend that the provisions of Section 37 (2) (b) cannot be relied upon by the Board to grant planning permission in the appeal case instance.

7.5. Undesirable Precedent

I am of the opinion that a grant of planning permission in this instance would set an undesirable precedent in terms of non – compliance with planning conditions. Particularly in terms of finishing estates, providing appropriate infrastructure including landscaping and open space. A grant of planning permission in this instance would tacitly imply that given the current housing shortage that it is acceptable to build on areas of open space and that it is not imperative that all planning conditions need to be complied with in the original grant of planning permission. In fact, in the case of the current application and appeal before the Board, one could go further and suggest that non-compliance with condition could be of a financial benefit to the developer if the development were permitted to sell on land earmarked for open space for future development and financial gain.

8.0 Recommendation

I recommend that the decision of the planning authority be upheld and planning permission be refused to the proposed development.

9.0 **Appropriate Assessment**

There are no European sites in the vicinity. It is proposed to connect to public foul sewers. The proposed development will not have any significant impact on European sites.

Having regard to the nature and scale of the proposed development and nature of the receiving environment and proximity to the nearest European site, 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. I recommend that planning permission should be refused for the reasons and considerations as set out below.

11.0 **Reasons and Considerations**

1. It is considered that the proposed construction of six number dwelling houses on the subject site would materially contravene condition number 3 of Meath County Council's decision under Register Reference 94/1258 / PL17.096766 which required that prior to the occupation of the first dwelling house the subject site be provided as open space and finished to the satisfaction of the planning authority. The granting of planning permission for the proposed six number dwelling houses would set an undesirable precedent in terms of non-compliance with planning conditions and would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development for 6 number dwelling houses on an existing open space area of land, indicated for use as open space in Register Reference 94/1258 / PL17.096766, would be contrary to policy SOC POL 39 and policy SOC POL 42 of the Meath County Development Plan 2013 – 2019 and policy SOC POL 16 of the Ashbourne LAP 2009. Given the absence of any public open space provision in the scheme the proposal would also be contrary to Section 11.2.2.2 public open space provision requirements for residential developments as per the Meath County Development Plan 2013 – 2019 and section 6.6.1 of the Ashbourne LAP 2009 which requires that 'Public open space shall be provided for residential development at a minimum of 15% of total site area.' The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Fiona Fair

Planning Inspector

12.10.2016