



An  
Bord  
Pleanála

## Inspector's Report PL29N. 247416

---

<b>Development</b>	Block of 9 apartments
<b>Location</b>	Off Grace Park Road, Dublin 9
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3509/16
<b>Applicant</b>	LDC Developments
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	LDC Developments
<b>Observers</b>	Transport Infrastructure Ireland Silvia Danka Euridice Duarte Brian Warner Brian Kidney Robert and Colette Cribbin Eirin Carolan Barbara Halpenny and Mary Halpenny
<b>Date of Site Inspection</b>	11 <sup>th</sup> January 2017
<b>Inspector</b>	Stephen J. O'Sullivan

## 1.0 Site Location and Description

- 1.1. The site is in a suburban area of north Dublin. It has a stated area of 2,788m<sup>2</sup>. Access to it from the Grace Park Road is along the road for a small housing scheme known as the Cloisters. The apartment buildings of Hampton Lodge stand to the west of the site. They are between three and five storeys in height. The back gardens of detached houses along Grace Park Road and the Cloister adjoin the eastern and northern site boundaries respectively. The site itself is mainly a lawn. However a part of it have been fenced and used as a construction compound beside four recently constructed houses outside the site. A hardcore surface and shipping containers have been placed upon the ground there. The construction of the houses beside that compound has been completed.

## 2.0 Planning History

There is an extensive planning history pertaining to the site which is set out in the council planner's report. Of particular relevance are the following decisions –

PL29N. 203824, Reg. Reg. 4378/02 – the board granted permission on 10<sup>th</sup> February 2004 for a development of 110 apartments on a site that includes the current appeal site. The authorised apartments have been built and are known as Hampton Lodge. The proposed development had been 158 apartments. Condition no. 2 of the board's decision omitted a block of apartments that would have stood on the current site. Condition no. 6 required a scheme of landscaping for the entire site to be agreed with the planning authority and implemented. The conditions read as follows –

2. Block C, together with associated access road, car parking and cycle parking, shall be omitted from the proposed development.

**Reason:** It is considered that this element of the proposed development, by reason of its back-to-back design, layout and proximity to adjoining property, would seriously injure the amenities of property in the vicinity and would provide a substandard form of residential amenity for future occupants.

6. The area shall be landscaped in accordance with a scheme of landscaping and boundary treatment, details of which shall be submitted to the planning authority for agreement before development commences. The scheme shall include a timescale for its implementation.

**Reason:** In the interest of visual amenity

Reg. Ref. 4522/06 – an application was made to the planning authority for a development of 12 houses including 8 which would be on the site of the current appeal. The planning authority granted permission but excluded the latter 8 house by condition no. 4 which reads –

Block Two, comprising 8 proposed housing units, with associated access road and car parking shall be omitted from the proposed development.

**Reason:** It is considered that this element of the proposed development would lead to the potential loss of open space amenity for the residential units currently under construction. Furthermore by reason of its design, layout and proximity to adjoining property it would be detrimental to the amenities of property in the vicinity.

PL29N. 222175, Reg. Ref. 6373/06 – the board refused permission on 17<sup>th</sup> September 2007 for 8 houses on the land that comprises the current appeal site. The reasons for refusal were –

1. The site of the proposed development is located in an area, which is zoned 'Z1' "to protect, provide and improve residential amenities" in the current Dublin City Development Plan. It is considered that the proposed development would result in the loss of a centrally located useable open space within the overall site which is integral to the amenities on the overall site for future residents of the overall development. The proposed development would seriously injure the amenities of future occupants of the overall site, by reason of loss of open

space and would, therefore be contrary to the proper planning and sustainable development of the area.

2. The site of the proposed development is located in an area which is zoned 'Z1' "to protect, provide and improve residential amenities" in the current Dublin City Development Plan. It is considered that the proposed development, when taken together with permitted development on the site, would appear as a cramped form of development which would be out of character with the general pattern of development within the overall site and would seriously injure the visual amenities of the area. The proposed would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to the location of the proposed development in an area zoned objective 'Z1' "to protect, provide and improve residential amenities" in the current Dublin City Development Plan, and Section 15.9.6 of the Development Plan and the Residential Density Guidelines for Planning Authorities issued by the Department of the Environment and Local Government in September 1999, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the proposed development would not seriously injure the amenities of future occupants of the proposed dwellings by reason of the substandard provision of private amenity space. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

### **3.0 Proposed Development**

3.1. It is proposed to build a three-storey building on the site containing 9 apartments, 6 of which would be two-bedroom units and the other 3 one-bedroom units. The stated floor area is 860m<sup>2</sup>. Access would be along a 6m wide road from the road serving the Hampton Lodge apartment scheme. 11 surface car parking spaces would be provided on the site.

## 4.0 **Planning Authority Decision**

### 4.1. **Decision**

The planning authority refused permission for two reasons.

The first reason said the development would result in the loss of open space for the apartments at Hampton Lodge and so would seriously injure the residential amenities of property in the vicinity.

The second reason said that the development would be out of character with the development of the overall site and it would seriously injure the residential and visual amenities of the area by overbearing and overlooking.

### 4.2. **Planning Authority Reports**

#### 4.2.1. Planning Reports

There may have been ambiguity in condition no. 2 of the board's decision on PL29N. 203824, Reg. Ref. 4378/02. However subsequent decisions by the planning authority and by the board under PL29N. 222175, Reg. Ref. 6373/06 have clarified that the current site is centrally located useable open space which is integral to the amenities of the overall development at Hampton Lodge. The council's subsequent decisions have maintained this position. Therefore permission should be refused for the development as it would seriously injure the amenities of the overall site of the Hampton Lodge apartments. A three storey apartment block would unduly overlook and overbear the houses at the Cloisters.

#### 4.2.2. Other Technical Reports

The Roads and Traffic Planning Division stated no objection subject to conditions.

Drainage Division stated that adequate drainage details had not been submitted.

### 4.3. **Third Party Observations**

Numerous submissions were made that objected to the development on the ground set out in the subsequent observations on the appeal.

## 5.0 Policy Context

### 5.1. Development Plan

The Dublin City Development Plan 2016-2022 applies. The site is zoned under objection Z1 'To protect, provide and improve residential amenities'.

Policy QH5 to promote residential development addressing any shortfall in housing provision through active land management and a co-ordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites and under-utilised sites

Policy QH8 is to promote the sustainable development of vacant or under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.

Policy QH9 is to promote the sustainable development of vacant or under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.

Policy QH19 is to promote the optimum quality and supply of apartments for a range of needs and aspirations, including households with children, in attractive, sustainable mixed-income, mixed-use neighbourhoods supported by appropriate social and other infrastructure

Policy GI13 is to ensure that in new residential developments, public open space is provided which is sufficient in quantity and distribution to meet the requirements of the projected population, including play facilities for children.

Section 16.3.10 of the plan states that in new residential developments, 10% of the site area shall be reserved as public open space.

Appendix 6 is entitled the Dublin Port Tunnel Structural Safety. It says -

A suitably qualified structural engineer must prepare a development assessment. If the proposal is within 6 metres of the outer edges of the tunnel bore, a suitably qualified tunnelling engineer must prepare the assessment. Assessment of the structural suitability of proposals and submitted applications is at present carried out

by Transport Infrastructure Ireland, acting on behalf of the Roads and Traffic Department of Dublin City Council.

## 5.2. **Natural Heritage Designations**

None

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

- The proposed development is in keeping with the residential zoning of the site. It would be located in an established residential area with established core commercial areas and good transport links to the city centre and other areas of Dublin
- The provisions of the 2016 city development seek to increase the housing stock at sustainable densities at underutilized infill sites, including policies QH5, QH8 and QH9. Policy QH19 promotes high quality apartments in sustainable neighbourhoods. The proposed development would fulfil those policies.
- The proposed development would provide a high level of amenity for its occupants. Policy GI13 of the development plan is that in new residential development public open space is provided. Section 16.10.3 of the plan requires 10% of the total site area in new residential developments to be provided as open space. The site is 2,000m<sup>2</sup> and so 200m<sup>2</sup> of open space would be required. 570m<sup>2</sup> would be provided. The overall site area including the scheme at Hampton Lodge is 17,243m<sup>2</sup> which would require a total area of open space of 1,724m<sup>2</sup>. The overall site including the proposed development would have 9,947m<sup>2</sup>. The excess provision of open space overcomes the previous reasons for refusal and means permission should be granted.
- The size of the proposed apartments would comply with the design standards issued by the minister in 2015. The provision of 11 car parking spaces would comply with the standards set in section 16.38.9 of the development plan.

- The proposed development would protect the amenities of neighbouring homes.
- The site is owned by the applicant and is not part of the open space for the adjoining apartment development known as 'Hampton Lodge'. The applicant does not have public liability insurance on this land, so it must be secured to prevent its use for recreational purposes.
- The proposed apartments would be in a building that better responds to the character of the existing apartment buildings on the site. It would provide 570m<sup>2</sup> of open space in addition to the 9,377m<sup>2</sup> of open space at Hampton Lodge, which would satisfy the requirements of the development plan. Section 16.10.3 of the 2016 development plan requires 10% of the total site area in residential developments to be provided for open space. The current development would provide 570m<sup>2</sup> of open space on a site of 2,000m<sup>2</sup> and so would comfortably exceed this requirement. The total site area for Hampton Lodge is 15,243m<sup>2</sup>, so the provision of 9,377m<sup>2</sup> of open space means that the existing development also has more than adequate open space under the development plan standard.
- The site occupies the location from which the proposed Block C was omitted by condition no. 2 of the board's decision on PL29N. 203824, Reg. Ref. 4378/02. The reason for the condition said that this element of the proposed development would seriously injure the amenities of property in the vicinity and provide substandard amenity to its future occupants by reason of its back to back design, layout and proximity to the adjoining property. The development now proposed has been redesigned and repositioned to address the issues that formed the reason for the omission of Block C by the board.
- Housing was omitted from this location by condition 4 of the planning authority's decision Reg. Ref. 4522/06. The reason for that condition referred to loss of open space amenity for the residential units then under construction and that its design, layout and proximity would be detrimental to the amenities of property in the vicinity. However the development proposed in this application would not reduce the amount of open space for the apartments at Hampton Lodge or the proposed apartment to a level below that required



under the development plan. The reason for condition 4 of Reg. Ref. 4522/06 would not apply in this case, therefore.

- The refusals under Reg. Ref. 16/2132 and 16/2272 would not apply in this case as the site is not designated as public open space and the proposed design would be of high quality and the amenities of future occupants and neighbouring dwellings would be protected.
- The footprint of the proposed development would be 267m<sup>2</sup> leaving 570m<sup>2</sup> of open space. Therefore it can be distinguished from the development of 8 houses which the board refused permission for under PL29N. 222175 Reg. Ref. 6373 which would have had a much larger footprint and left less open space on the site. Thus reason no. 1 of the board's would not apply. The form and design of the current proposal is also fundamentally different so reasons 2 and 3 would not apply either.
- The intent of the parent permission under PL29N. 203824, Reg. Ref. 4378/02 was that the site be used for residential development in accordance with its zoning rather than open space. It is clear that the area should not be designated as public open space.
- With regard to reason no. 1 of the planning authority's decision, there was no explicit requirement in condition no. 2 of the board's decision under PL29N. 203824, Reg. Ref. 4378/02 for the current site to be used as open space. The series of event which have led to the current situation leaves the appellant exposed to an ongoing public liability and it must now take steps to secure the area to comply with the requirements of the insurance underwriters. The proposed development addresses previous refusals on the site with a better proposal which provides more than enough public open space to meet development plan standards on the current site and on the overall site. Land Registry details are submitted to show that the site is in separate ownership from the Hampton Lodge apartments. It does not form part of the open space for those apartments and has not been maintained or managed by the management company for those apartments. It cannot be conditioned as part of the open space for a separate scheme. The site is zoned residential therefore it was always the intention of the planning

authority that it would provide residential development. The proposed development would enhance the overall quality of Hampton Lodge by utilising a vacant and unattractive site and providing an additional 570m<sup>2</sup> of open space. The appellant does not have public liability insurance for the site and the insurance underwriter has required that the land be secured with fencing. The applicant is requesting the board to adopt a sensible approach to this proposal. This land is in private ownership. It does not form part of the public open space attributable to Hampton Lodge.

- With regard to reason no. 2 of the planning authority's decision, the proposed design overcomes the reason for the omission of Block C by the board through re-design and re-orientation of the proposed units. The 6 two-bedroom apartments consist of a total floor area of 78.9m<sup>2</sup> while the 3 one-bedroom apartments consist of a floor area of 48.5m<sup>2</sup>. They would meet the standards set down in the apartment design guidelines issued in 2015. The development would include a new access road, refuse storage area and public open space in excess of the 10% minimum requirement.
- The proposed development has been designed with particular emphasis on the context of its location and the existing dwellings in the vicinity of the site. It presents high quality accommodation that has been formulated with consideration of regional and local policy and guidelines. It addresses the concerns with poor design that are present in the planning history of the site. The board should adopt a pragmatic approach to the development proposal having regard to the future use of the land in the event that its original development potential is not realised. The proposal is in line with national policy to promote increased residential densities and accords with the proper planning and sustainable development of the area.

## 6.2. Planning Authority Response

The planning authority stated that it had no further comment.

### 6.3. Observations

6.3.1. Several observations were received from third parties that objected to the proposed development on the following grounds -

- It would result in the loss of open space that is a valuable amenity for the residents of the apartments at Hampton Lodge, many of whom are families with young children. The site was landscaped and maintained as open space by the management company for the apartments. It was available to the residents until recently when the applicant built the houses authorised under 4522/06. Those houses have been built and sold but the applicant has left the current site in an unsightly and unkempt state since then.
- The provision of open space on the site as an amenity for the apartments at Hampton Lodge is required under the permission for the apartments granted by the board under PL29N. 203824, Reg. Ref. 4378/02, in particular by conditions 2 and 6 of that permission. This requirement has been repeatedly upheld in subsequent decisions by the board and the planning authority. The claim in the appeal that the decisions preventing development on this site related solely to design is wrong.
- The use of the site as open space is part of the residential use for the entire site authorised under PL29N. 203824, Reg. Ref. 4378/02. It is required to comply with the zoning to protect residential amenity. The site is not underutilised.
- The development would undermine the visual as well as the recreational amenities of the area, resulting in a cramped and claustrophobic appearance for Hampton Lodge. The design of the proposed building is poor.
- The development would introduce a road close to ground floor apartments which would introduce noise and disturbance that seriously injured their residential amenity. The road would also inhibit the use of the remaining open space for children's play due to fears for traffic safety.
- It is amazing that a company could purchase part of the open space required for the apartments at Hampton Lodge. How could such a transfer be legal? The appeal contains a veiled threat as to the use of the site if this

inappropriate proposal in not permitted. The reference to public liability issues is contemptuous. It is expensive and unfair for local residents to have to continually object to applications for permission on this site. Access to the proposed development would cross land that is not owned by the applicant

- The development would overlook houses at the Cloisters and would exacerbate parking on the access roads there.

6.3.2. Transport Infrastructure Ireland complained that the planning authority had not sought its comments on the application despite its possible impact on the port tunnel. It stated that further assessment is required. It refers to the guidelines at appendix 6 of the development plan.

## 7.0 **Assessment**

7.1. The planning issues arising in this case can be addressed under the following headings –

- Planning history
- Impact on the amenities of properties in the vicinity
- Other issues

### **Planning history**

7.2. The site is part of the open space of the residential development at Hampton Lodge authorised by the board's grant of permission under PL29N. 203824, Reg. Ref. 4378/02. The wording of condition no. 2 of the board's decision was unfortunate in that it did not explicitly state that this land would be incorporated into open space. However it was an established practice at the time to omit elements from proposed residential development with a presumption that the open space serving the authorised development would be increased concomitantly. It is noted that the reason for condition no. 2 did not refer to a lack of open space in the proposed development to serve its future occupants. However this would not be the only benefit that would arise from the maintenance of this land as open space. It also

serves mitigate the significant transition in architectural scale between the older two storey houses beside this part of the site and the much larger apartment buildings that were authorised by the permission in the central part of the site. The reason for condition no 2 did explicitly refer to the proximity to other property and the need to protect its amenities as a reason not to authorise buildings on this land. Furthermore condition no. 6 of the permission required the landscaping and boundaries of the entire site to be carried out in accordance of the detailed specifications of the planning authority. It is therefore clear that the terms and conditions of the permission did not envisage or allow the severance of the site of the current appeal from the site of the overall residential development which it authorised. Any confusion that might have arisen on this matter was resolved by the board's decision to refuse permission to build on this land under PL29N. 222175, Reg. Ref. 6373/06 which included the explicit statement that the open space there is integral to the amenities of the overall development. The permitted development has been carried out, so there is a legal obligation on the owner and occupier of the site, and any part of it, to comply with the requirements of the permission. These requirements include one that the site of the current appeal be maintained as open space that is available to the residents of Hampton Lodge. This is evident from a consideration of the actual wording of the board's previous decisions and the circumstances of the site. The subsequent decisions of the planning authority have upheld this requirement. The exasperation expressed in the submissions from third parties regarding the frequency with which they have had to object to applications for permission on this land is therefore understandable.

- 7.3. The various arguments submitted in the appeal to undermine this requirement are not persuasive. The reasons why the board and the planning authority have prevented building on the site did not relate solely to the design or quality of the particular proposals, as claimed in the appeal. They explicitly said that building on this open space was not acceptable in principle. Proper residential accommodation necessarily includes some form of open space, so the requirement that the current site is kept as open space accords the zoning of the area. This site could not reasonably be regarded as underutilised, so policies QH5, QH 8 and QH9 of the development plans would not apply. Planning permissions apply to the land upon which they were granted. It would undermine the purposes of the planning act and

the common good if the conveyances of different parts of that land site to different companies, whether for consideration or otherwise, was taken as a justification to dispense with the obligations to carry out an authorised development in accordance with the conditions of the permission. In cases where parts of the land can be sold for profit while other parts that are integral to the development may not be, as with an apartment block and its associated open space, such an approach would create the means and the motive to frustrate the proper planning and sustainable development of an area. The only disamenity that arises from the current situation of the site arises from the failure to implement the requirement to landscape and maintain it as open space under the parent permission for the site. The failure to comply with a lawful obligation is not a justification to set the obligation aside. The applicant's failure to take insurance against the liabilities arising from its ownership of the site is troubling. It would not justify granting permission for a development that was not in keeping with the proper planning and sustainable development of the area. Indeed a grant of permission for such a reason would raise a significant moral hazard that other landowners might fail to adequately insure their properties in the hope of some undue benefit under the planning system. Policy GI13 and the standards at section 16.10.3 of the development plan set a minimum level of open space for residential proposals. They do not establish a target to which the open space serving authorised homes should be reduced.

### **Impact on the amenities of property in the vicinity**

- 7.4. It is, of course, open to someone to apply for permission to carry out a development that would not be in keeping with a prior permission even if that permission has been implemented. The application then falls to be determined on the basis of whether the new proposal is in keeping with the proper planning and sustainable development of the area. The development proposed in this application would not be. It would deprive the residents of Hampton Lodge of a centrally located area of open space that is suitable for recreational use. There are substantial areas of open space on the southern, western and northern boundaries of the overall site. They provide a significant visual amenity and help to integrate the apartment development with the older suburban housing around it. However those spaces are elongated and have steep slopes. Therefore they are not suitable for active recreational use,

while the central area of open space that the proposed development would remove is suitable for such use. The arguments in the appeal relating to the crude areas of open space on the site do not take account of these circumstances and do not justify the proposed development. The proposed access road would be within 5m of the patios serving some of the existing ground floor apartments, and so would introduce a level of noise and disturbance that would significantly reduce the value of those private open spaces. The detailed design of the proposed development resembles that of the other apartment buildings at Hampton Lodge and achieves an acceptable standard. However the open space that it would occupy provides an important visual amenity for the apartment scheme due to its central location and shape. Along with the other open spaces at Hampton Lodge, it mitigates the visual impact of the large apartment buildings that have been built and helps integrate them into the suburban housing on the adjoining land. Its loss would therefore have a significant negative effect on the visual character of the area. The proposed development would, therefore, seriously injure the residential and visual amenities of the apartments at Hampton Lodge. Reason no. 1 of the planning authority's decision is therefore justified.

The proposed three storey apartment block would maintain a separation distance of more than 22m from the neighbouring houses at the Cloisters, and slightly more from the existing apartments at Hampton Lodge. Given the modest height of the proposed building, it is considered that this distance is sufficient to ensure that it did not cause under overlooking or overbearing of those houses and apartments.

### **Other issues**

- 7.5. The proposed apartments have been designed to comply with the minimum standards set out in the guidelines on apartment design issued by the minister in 2015 and would provide an adequate standard of amenity for their occupants.
- 7.6. Adequate parking would be provided and the proposed development would not have more than a marginal impact on the demand for parking on the approach roads to the site. The specifications of the proposed access road do not comply with the applicable standards set out in DMURS. However this defect could be remedied

without changing the layout of the development and the matter would not in itself justify refusing permission.

- 7.7. The applicant submitted a report regarding the potential impact of the development on the port tunnel, as required under appendix no. 6 of the development plan. This should have been referred by the planning authority to TII but was not. However this omission was remedied when the appeal was made to the board. It is not clear why the subsequent submission from TII did not provide substantial advice on the proposed development in the manner envisaged by that appendix. However the proposed development would not include basement parking and would be a smaller building than the other apartment blocks at Hampton Lodge. It would also be on higher ground further from the line of the tunnel. It is not considered, therefore, that this issue would itself justify refusing permission for the development.
- 7.8. The applicant's landholding, as shown on the Land Registry Maps submitted with the application and appeal, does not extend as far as the public road. The northern end of the proposed access road is along a footpath. That footpath has not been taken in charge by the roads authority and is owned by the management company for the Hampton Lodge apartments, according to a submission from that company which also objected to the development on other grounds. That submission was consistent with the observations on site. It is therefore possible that the applicant lacks the necessary legal interest in land to carry out the proposed development.

## **8.0 Recommendation**

- 8.1. I recommend that permission be refused for the reasons set out below.

## **9.0 Reasons and Considerations**

1. The proposed development would occupy land that is part of the open space of the residential development authorised under PL29N. 203824, Reg. Ref. 4378/02, known as Hampton Lodge. The proposed development would result in the loss of a centrally located useable open space which is integral to the amenities of the dwellings at Hampton Lodge. The proposed development would therefore seriously injure the residential amenities of those dwellings



and the visual amenities of the overall development. It would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development would materially contravene conditions nos. 2 and 6 of the grant of permission made by the board under PL29N. 203824, Reg. Ref. 4378/02.

---

Stephen J. O'Sullivan

Planning Inspector

11<sup>th</sup> January 2017