



An  
Bord  
Pleanála

## Inspector's Report PL61.248562

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<b>Development</b>	Permission for the erection of a timber fence.
<b>Location</b>	83 Tirellan Heights, Headford Road, Galway
<b>Planning Authority</b>	Galway City Council
<b>Planning Authority Reg. Ref.</b>	17/57
<b>Applicant(s)</b>	Mr. Ruwan Migel Wasam
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Mr. Ruwan Migel Wasam
<b>Observer(s)</b>	Louise & Phelim Maguire Thomas & Margaret Hynes Kathleen Hogan Niall Rooney
<b>Date of Site Inspection</b>	14 <sup>th</sup> August 2017
<b>Inspector</b>	Rónán O'Connor

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## 1.0 Site Location and Description

1.1. The site is located within a large residential housing estate, located to the north-east of Galway City Centre. The appeal site in question is an area of green space located to the east of No. 83 Tirellan Heights. There is also a turning area included within the appeal site red line boundary.

## 2.0 Proposed Development

2.1. It is proposed to erect a timber fence of 1.2m in height to enclose the area of green space and the turning area.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Refuse permission for 4 reasons relating to (i) character of the area, hierarchy of open spaces, impact on residential amenities of the area and depreciation of property values (ii) loss of a vehicle turning head generating a traffic hazard (iii) material, scale and length of fence and impact on character of the area and impact on amenity and depreciation of property values (iv) applicant has not demonstrated sufficient estate or interest in the relevant land.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the planning officer reflects the decision of the local authority. Points of note are as follows

- Insufficient evidence of land ownership submitted.
- Enclosure of the open space, used for a period in excess of 35 years, would be unacceptable.
- Materials out of character.
- Loss of turning area.

- Refusal recommended.

### 3.2.2. Other Technical Reports

Surface Water Drainage – No objection.

### 3.3. Prescribed Bodies

#### 3.3.1. None

### 3.4. Third Party Observations

- 3.4.1. 4 submissions were received in relation to the planning application. The issues raised are covered in the observations on the appeal and within the grounds of appeal.

## 4.0 Planning History

- 4.1.1. 16/315 Refuse – Two-storey detached dwelling house for 6 reasons including (1) impact on character, residential amenity and property values (2) loss of a vehicle turning head (3) overlooking of adjoining properties (4) design and position to the rear of established building line (5) height, scale and impact on adjoining properties of the proposed boundary wall surrounding an area used as an open space (6) applicant has not demonstrated sufficient estate or interest in the relevant land.

## 5.0 Policy Context

### 5.1. Development Plan

Galway City Council Development Plan 2017-2023

- 5.1.1. The appeal site is zoned 'Residential' under the Galway City Council Development Plan 2017-2023.
- 5.1.2. Relevant sections of the CDP include Section 8.7 Urban Design.

### 5.2. Natural Heritage Designations

None

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The grounds of appeal, as submitted by Fergal Bradly & Co. Ltd., on behalf of the First Party Appellant, are as follows:

- Subject area of appeal relates to a private side garden adjacent to the applicant's residence and entirely within the applicant's folio.
- Now wishes to enclose his garden with a low level timber fence for reasons of security, to eliminate trespass, to reduce disturbance caused by anti-social behaviour and to deter the dumping of rubbish within his private property.
- LPA have quoted a section relating to Public Spaces within the CPD – the appeal site is not a Public Space.
- Argument in relation to the character of the fence is unjustified.
- Proposed development would be exempted development under Class 5 but for the fact that the land in question has remained unbounded for a period in excess of 10 years.
- Applicant agrees to legally assign the section of his property which is currently used as a turning head to Galway City Council upon the successful outcome of this application.
- Fence is similar in material, style and length to other existing timber fences located within the immediate vicinity of the appeal site and throughout the development.
- Would only impact on adjoining properties by preventing trespass.
- Estate includes a number of large, centrally located public open spaces.
- LPA have acknowledged by way of letter that they are satisfied that the applicant has sufficient legal interest in the property.
- A copy of the applicant's folio was submitted with the planning application.

## 6.2. Planning Authority Response

6.2.1. None

## 6.3. Observations

6.3.1. 4 submissions have been received under S131 from Thomas & Margaret Hynes, Kathleen Hogan, Phelim & Louise Maguire and Niall Rooney.

The issues raised are summarised below:

- Neighbours maintained the area for approximately 3 years after 1979
- After that the Council maintained the area for the next 30 years
- New owners claim the area belongs to them
- Previous owners never considered the area to be theirs
- O'Malley Construction Ltd, who built Tirellan Heights, have confirmed that area was an amenity for the residents and at no time was there any intention to have building or fencing around the space.
- Applications for a house and a fence were refused by LPA
- Object to references of anti-social behaviour and illegal dumping – there is no evidence for this
- No evidence that land is private
- Children play on the area
- Would like to know when and how the open green area change from public ownership to residential
- Must be an error in the land registry
- Marked as a green space in the original planning application and was separated by a 6 foot wall which was a condition in the original planning permission.
- A fence would obstruct view of vehicles/cars and trucks would have to reverse 100m or more
- Would restrict access for emergency vehicles

- Residents use and maintain this space
- Provides a buffer for noise and air pollution
- Would devalue property prices
- Quality of plans is poor
- No fenced green areas within the estate/less than 5 timber fences in the estate
- Residents have no need to trespass on applicant's property
- Has not demonstrated ownership

#### 6.4. Further Responses

6.4.1. None

### 7.0 Assessment

7.1. The following assessment covers the points made in the appeal submissions and also encapsulates my *de novo* consideration of the application. The main issues in the assessment of the proposed development are as follows:

- Principle of Development
- Design and Visual Amenity Impact
- Traffic Impacts
- Other Issues
- Appropriate Assessment

#### 7.2. Principle of Development

7.2.1. From an examination of the evidence on file, the land in question has clearly been used for a significant period of time (in excess of 30 years) as communal open space associated with the wider estate and has been maintained by the council until recently. The principle of enclosing an area of public open space to prevent access is not acceptable in planning terms. I note here the previous reasons for refusal on this site, which refers to the area being used as an area of open space. As such the proposal is unacceptable in principle.

### 7.3. **Design and Visual Impact**

7.3.1. The principles of good urban design apply here, as set out in Section 8.7 of the CDP. The CDP states that *inter alia* that open spaces contribute to the character of the area which evolves over time, and that new development should enhance this character. This area of open space has been utilised over a long period of time and now forms part of the character of the estate as a whole, and the erection of a fence enclosing the area would irrevocably erode this established character. As such the proposal is not acceptable in principle.

7.3.2. Furthermore, the proposed fence would be out of keeping with the established pattern of development in the estate, which is one of established housing interspersed by areas of accessible open space, and the visual impact of the fence would not be acceptable. There are a very limited number of other timber fences, but these form part of a domestic boundary rather than enclosing areas of open space.

### 7.4. **Loss of Turning Head**

7.4.1. The proposal would result in the loss of the existing turning head. This is a necessary piece of infrastructure, given the existing narrow cul-de-sac, and the loss of same would result in cars being forced into attempting unsafe manoeuvres, such as mounting the pavement or reversing for significant distances, giving rise to a traffic hazard. I note the applicant has stated he would cede the turning head area to the LPA but there is no correspondence from the LPA in this regard. In any case the application drawings indicate the fence enclosing the area of the turning head. Having regard to the above, the loss of the turning head is not acceptable as it would result in a traffic hazard.

### 7.4.2. **Other Issues**

7.4.3. The issue of ownership relative to third party lands/boundaries is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of S.34(13) of the Planning and Development Act and Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007).

### 7.5. **Appropriate Assessment**



- 7.5.1. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

## 8.0 Recommendation

- 8.1. Refuse Permission

## 9.0 Reasons and Considerations

1. The proposed development, which results in the loss of established open space, constitutes inappropriate development which would seriously injure the residential amenities the area and depreciate the value of properties in the vicinity. Furthermore, the proposed fencing would be out of character with the pattern of development in the area, which is one of established housing interspersed with areas of accessible open space. Accordingly, the proposal would be contrary to the proper planning and sustainable development of the area.
2. The loss of the turning area would force vehicles to either reverse or mount the pavement in order to exit the cul-de-sac. As such the proposal would endanger public safety by reason of a traffic hazard.

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Rónán O'Connor  
Planning Inspector

15<sup>th</sup> August 2017