



An
Bord
Pleanála

Inspector's Report ABP-300097-17

Development	The construction of a housing development of 6 no. two storey, four bedroom, semi-detached houses, open space provision, extension of the estate road, all associated services, service connections, landscape, boundary treatment and site development works.
Location	Tudor Grove, Ashbourne, Co. Meath.
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	AA/170958
Applicant(s)	Quarrycross Limited.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Quarrycross Limited.
Observer(s)	None
Date of Site Inspection	25 th January 2018
Inspector	Patricia Calleary

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of c.0.5 hectares is located within existing residential estates known as 'Tudor Grove and Tudor Heights' which are located to the north-west of Ashbourne in County Meath. The site is accessed via the Tudor Grove / Heights estates, which is to the east of the N2 (Slane Road). The access road adjoins the entrance to St. Mary's National School at the end of a short cul-de-sac. The school and its curtilage are located directly to the south of the appeal site.
- 1.2. The appeal site is situated directly east of House No.18 Tudor Heights and comprises an area of unmaintained / unused open land. The site would comprise almost half of the overall unmaintained open lands at this location. The ground levels of the site are slightly elevated above Tudor Heights.
- 1.3. The western boundary, which adjoins Tudor Heights, comprises a timber post fence. The boundary to the east and this side is open and adjoins the remainder of the unmaintained lands. The site boundary to the south is unmarked and there is a tree lined boundary further south marking the property of St. Mary's National School. There is a mature hedge-line boundary to the north separating the site with Racehill Close housing estate.

2.0 Proposed Development

- 2.1. The proposal would involve the construction of 6 no. two storey, four bedroom semi-detached houses. These would be laid out as a continuation of the ten existing houses located on the northern portion of Tudor Heights. The development would also include an area of open space which would be overlooked by the proposed houses. The site and houses would be accessed from the Tudor Heights estate road, which would be extended eastwards. An attenuation tank for the purposes of retaining surface water generated from the development is proposed to be located within the proposed open space area.
- 2.2. Note: The site layout drawings also show a proposal for a residential care / nursing home and car parking to the east of the appeal site and a proposed access road to the south of the site. These elements are outside of the redline boundary but within the overall landholding, as denoted by a blue line boundary on the site

location/landholding map submitted with the application. They are indicated as future proposals and are not part of the proposed development which is the subject matter of the current application and appeal.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. Meath County Council refused planning permission for two number reasons which can be summarised as follows:

- **Reason No. 1** - Development would materially contravene Condition No.3 of Planning Reg ref: 94/1258 (Appeal Ref: PL17.096766) which required the site to be provided as open space.
- **Reason No. 2** - The proposed development would materially contravene Policy SOC POL 39 'To resist the loss of existing public open space, unless alternative recreational facilities are provided in a suitable location' and Policy SOC POL 42 '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' of the Meath County Development Plan 2013 – 2019.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The Planning Officer put forward a recommendation to refuse permission. The key points in their report relate to open space and the matters raised are summarised as follows:

- Open space has been provided, however this area is not sufficient to meet the requirements of PL17.096766 / Planning Ref: 94/1258.
- Appeal site and entire landholding are currently undergoing Meath County Council's taking in charge process and the lands which are in the ownership

of the applicant are to be used as Public Open Space to serve the existing development.

3.2.2. Other Technical Reports

- Water Services - No objection, subject to conditions;
- Public Lighting (Transportation Section) – Conditions recommended;
- Housing – Notes development would be exempt from Part V requirements;
- Road Design – No objection subject to narrowing of road;
- Environment – Conditions recommended.

3.3. Prescribed Bodies

- Irish Water – No objection subject to conditions.

3.4. Third Party Observations

- None.

4.0 Planning History

4.1. Appeal Site

- **PA Ref: P94/1258** - Talara Homes received a decision to grant planning permission (1995) for Phase IV of Tudor Grove residential scheme comprising 18 no. two storey semi-detached dwellings on lands which include the appeal site. An appeal was lodged by the first party (Boards Ref: **PL17.096766**) solely against one condition (Condition No.2) attached to the decision to grant permission. Condition No.2 had required houses No.s 1 to 2 and 15 to 18 to be omitted, as well as corresponding changes to the access road. The Board limited its considerations to the appealed condition only and on the 21st December 1995 directed the Planning Authority to remove Condition No.2 under Section 15 of the Local Government (Planning and Development Act) 1992.

- **PL17.246868 / DA30260** - Quarrycross Limited were refused permission (24th October 2016) for the construction of 6 no. houses, extension to the estate road and all associated site works on lands which include the appeal site. The layout presented was almost identical to the proposal which is the subject matter of this application and appeal, save for the open space, which is included within the redline boundary under the current proposal and was shown as a similar landscaped area outside of the redline boundary under the previous proposal (PL17.246868/DA30260).

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Meath County Development 2013-2019 is the current applicable development plan for the area. The majority of the appeal site is zoned A1, 'To protect and enhance the amenity of developed residential communities'. The proposed access road and a small portion of the proposed open space which would serve the development are contained within these 'A1' zoned lands. The remainder of the site would be laid out as open space and this open space area would be largely located on lands that are zoned G1 'To provide for necessary community, social and educational facilities' with a smaller area on 'A1' zoned lands.
- 5.1.2. The following policies set out in the Development Plan are also considered relevant.
- SOC POL 39: 'To resist the loss of existing public open space, unless alternative recreational facilities are provided in a suitable location'.
 - SOC POL 42: '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'.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The specific grounds of appeal can be summarised as follows:

- Current proposal varies from previous proposal refused under PL17.246868 in that it also includes a new outdoor area of c.2400 sq.m.
- Greater reliance needs to be placed on infill proposals including small pockets schemes on waste ground.
- Notes report of Inspector under PL17.246868 including reference to condition number 3 of the original order concerning open space within which it was considered may be unenforceable.
- There is no universal principle in planning practice that land which was earmarked for amenity purposes cannot accommodate new development.
- It would be appropriate for the Board to consider whether the site would ever be used as communal open space rather than being used for anti-social or illegal purposes, which is the case at present.
- The development would not contravene the residential land-use matrix.
- Adopted policies (SOC POL 39 and SOC POL 42) should not be applied robotically, but assessed in a fair manner. These policies seek to preserve worthwhile open space and should not be used to ensure the longevity of wasteland in a housing estate.
- Planning policy and development standards have evolved since the original permission issued and this proposal should to be decided against the policies and standards that currently apply, rather than those which existed two decades ago.
- The Council could not reasonably have concluded that the erection of new dwellings on residentially zoned lands would materially contravene its Plan.
- Requests An Bord Pleanála to uphold the appeal and to grant permission for the development.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority state that they are satisfied that all matters outlined in the appeal were considered during its assessment of the planning application, as detailed in the Planning Officer's report.

6.3. Observations

- None

7.0 Assessment

7.1. Introduction

7.1.1. I consider the key issues in determining this appeal and which I have considered in the remainder of my assessment are as follows:

- Planning and Zoning History
- Open Space Considerations
- Specific Planning Policy
- Other Matters (Undesirable precedent, Reference to Material Contravention of policies of the Development Plan, Comparison of current application and previous proposal and Appropriate assessment).

7.2. Planning and Zoning History

7.2.1. In 1995, planning permission was granted under Reg. Ref. 94/1258 / PL17.096766 for a housing development comprising 18 semi-detached dwellings, on lands which included the appeal site. The development was referred to on the public notice as comprising Phase IV of Tudor Grove residential scheme and the planning officers report refers to it as the final phase of the overall development of Tudor Grove. Condition No.2 attached to the decision required the omission of five dwellings on sites Nos. 1, 2 and 15 to 18. Following an appeal made solely against this condition under reference no. PL17.096766, the Board's decision was to direct the Planning Authority to delete this condition. Consequently the 18 houses as originally proposed were permitted.

7.2.2. Condition No.3 attached to the same planning permission under Planning Reg. Ref. 94/1258 reads as follows: '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 houses were subsequently developed, the

open space area was never landscaped or planted and it currently comprises unkempt and unmaintained open lands, which are fenced off and which do not read as part of the 18-house development or the wider residential area.

- 7.2.3. The appeal site on which the current six houses are proposed, lies within a portion of the lands referenced as 'open space' on the original drawings on foot of which permission was granted under Ref: 94/1258.
- 7.2.4. At the time, the 18 houses were permitted in 1995, the appeal site comprised lands that were zoned 'F1' 'Open Space' under the Ashbourne Development Plan 1989. Under the current Meath County Development Plan 2013-2019, the lands on which the appeal site lies, are currently zoned 'A1' 'Residential' broadly on the part of the site where the houses are proposed and 'G1 'to provide for necessary community, social and educational facilities' on the majority/remainder of the site area which is shown proposed as 'open space'.
- 7.2.5. More recently, permission was refused by the Board for a similar development on the appeal site under ref: PL17.246868 / AA151349, primarily as it was considered that the proposed development would contravene condition No. 3 of 94/1258 / PL17.096766 and would be contrary to policy SOC POL 39 and SOC POL 42 of the current Meath County Development plan.
- 7.2.6. Based on a review of the planning and the zoning history as outlined above, the principal issue which needs to be addressed is whether or not it would be acceptable to develop a portion of the lands which were previously denoted 'open space' lands on the permitted development under Planning Reg. Ref. 94/1258 in 1995. I deal with this and other relevant matters in the remainder of my assessment as set out below.

7.3. **Open Space considerations**

- 7.3.1. The first party asserts that the granting of permission for the current application for six houses would be consistent with the current 'A1' residential zoning objective and would provide a sustainable infill development. It is also contended that, if permitted, the development would serve to improve the appearance of the area, as though the area was marked as 'open space' some time ago, it was not developed or landscaped and is currently attracting anti-social behaviour. The appellant also asserts that the current proposal is different to the more recent proposal that was

refused permission on 24th October 2016, following an appeal under PL17.246868. Specifically, it is contended that the current proposal includes open space of c.2400 sq.m, whereas no open space was included under the previous proposals decided on appeal under PL17.246868.

- 7.3.2. Based on a review of the planning history outlined above (Planning Reg. Ref. 94/1258 / PL17.096766), the appeal site evidently comprised an area which was proposed for open space. As referred to above, the Planning Officer recognised that it was the final phase (Phase IV) of the overall development. Notwithstanding that condition No.3, requiring open space to be provided, was not implemented and may be difficult to enforce because of the intervening time which has elapsed, the fact remains that the appeal site formed part of an area of land, which was required to provide public open space and permission was granted on that basis. While the land was not developed as open space, this does not excuse it from that requirement.
- 7.3.3. The open space which was required to be provided under Planning Reg Ref: 94/1258 occupied a large portion of the site presented with that application (c.60%), well in excess of the standard requirement of 15% under Section 11.2.2.2 (Houses) of the Development plan. However, those 18 houses were referenced as the final phase (Phase IV) of the wider residential area of Tudor Grove/Heights, which collectively represented c.151 houses on c. 9.5 hectares. Based on information on file and gathered during my site inspection, it is evident that the wider residential area within Tudor Grove/Heights development is lacking in terms of useable public open space and I see no reason that land that was intended to be provided as open space would be 'lost' for the development of additional housing, especially when it has been identified as open space on a previous planning permission.
- 7.3.4. It appears that at the time of granting permission for the 18 houses under Planning Reg. Ref. 94/1258 / PL17.096766, the area which was marked 'open space' was zoned 'F1 / Open Space' under the Ashbourne Development Plan 1989, which applied at the time. The point made by the appellant that the appeal site is no longer zoned 'open space' under the current development plan is therefore a reasonable point. Indeed, it could be argued that the zoning categories which currently apply support the development proposed, given the actual houses and their sites would be located on 'A1' zoned lands which permit new residential development and the open space would be located on 'G1' zoned lands within which residential development is

'open for consideration' within the plan. I also note that other areas which serve as open space within existing residential development are zoned 'F1' which seek to provide for and improve open spaces for active and passive recreational amenities under the current Meath county development plan, which I acknowledge would arguably support the appellants case. However, and as detailed under Section 7.2 above, the lands on which the houses are currently proposed (the appeal site) are lands which were required under its grant of permission to be developed as open space, regardless of any change in zoning objectives in the interim.

- 7.3.5. Given the lack of open space in the collective phases of Tudor Grove and Tudor Heights, permission should not be granted for the proposal as it would mean that the intended open space could not be delivered. To permit housing on this area would result in a permanent loss of lands for 'open space' and a consequential permanent loss of recreational amenity for the development, in which it was intended to serve. The proposal would therefore lie contrary to the proper planning and sustainable development of the area.

7.4. **Specific Planning Policy**

- 7.4.1. The second reasons attached to the Planning Authority's decision under Reg. Ref. AA/170958 states that the proposal would **materially contravene** policies contained in the Meath County Development Plan 2013 – 2019. Within the Meath Development Plan, Policy SOC POL 39 requires: 'To resist the loss of existing public open space, unless alternative recreational facilities are provided in a suitable location' and SOC POL 42 requires: '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'.
- 7.4.2. The first party submits that the lands are not subject to a deed of dedication and I see no evidence which suggests otherwise. It is clear however, and as outlined above, that the current proposal seeks to develop an existing open area of land previously indicated for use as open space under Planning Reg. Ref. 94/1258 / PL17.096766, endorsed by Condition No.3 attached to that permission.

- 7.4.3. While the development currently proposed includes an area of open space to serve the six houses, given that the entire of the development now proposed would be built on the 'open space' area, it would result in a reduced open space in the wider context without providing **alternative recreational facilities** in another suitable location and accordingly would not comply with stated policy outlined under SOC POL 39. If permitted, the development would also lie contrary to SOC POL 42 given that it was identified in a planning permission (Planning Reg. Ref. 94/1258 / PL17.096766) as comprising 'open space'.
- 7.4.4. In conclusion, I recommend that permission should be refused as the proposed development would be contrary to the stated policies set out in the Meath County Development Plan, specifically Policies SOC POL 39 and SOC POL 42 and would therefore be contrary to the proper planning and sustainable development of the area.

7.5. Other Matters

7.5.1. Undesirable Precedent:

The granting of permission on lands that were required to form part of open space integral to a permitted development would set an undesirable precedent for other such similar development on 'open space' plots of land. Collectively this could imply indirect support for non-compliance with key planning conditions and providing the required open space in housing schemes. While regard must be had to the current housing shortage, it is not acceptable to permit new houses on lands which were intended to be developed as open space to serve as an amenity to the occupants of the adjoining houses and where this did not occur as there is clearly no policy support for such a proposal.

7.5.2. Reference to Material Contravention of policies of the Development Plan:

7.5.3. The decision of the Planning Authority refers to the development (if permitted) would material contravene policies of the Meath County Development Plan 2013-2019, specifically Policy SOC POL 39 and Policy SOC POL 42. In this context, if the Board are minded to grant permission for the proposed development, Section 37(2) of the Planning and Development Act 2000 must be considered. This states that if the Planning Authority have decided to refuse permission on the grounds that a

proposed development materially contravenes the Development plan, the Board may only grant permission in certain circumstances. However, I hold a different view to the Planning Authority on the matter in that I consider that the development, if permitted, would not materially contravene the Development Plan. The policies referenced in the reason for refusal are general policies which seek to resist loss of open space and to maintain land identified in a planning permission as open space, free for recreational facilities of the area. They are not prescriptive in nature in relation to the appeal site. While the proposal would lie contrary to the policies outlined, I do not consider that the proposed development, if permitted, would materially contravene the Meath County development plan.

7.5.4. Comparison of current application and previous proposal:

It is worth noting that the only obvious difference between the site layout presented with the current proposal for six houses and the previous application for six houses refused by the Board under PL17.246868, is that the indicated open space proposed to serve the current development is included within the redline boundary whereas in the previous application, it lay outside of the redline boundary, and furthermore, it read as being an integral part of a future proposed nursing home. However, I recognise that the nursing home proposal does not form part of either the current or previous planning application / appeal file and as such I note its context as a future proposal only and I am satisfied that the open area now proposed would, if permitted, serve the six houses currently proposed.

7.6. Appropriate Assessment:

- 7.6.1. There are no European sites in the vicinity of the appeal site. In addition, it is proposed to connect the development to public foul sewer network. 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.

8.0 Recommendation

8.1. I recommend that planning permission is **refused** for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. It is considered that the proposed construction of six dwellinghouses on the appeal site would contravene condition number three attached to the permission granted under planning register reference number 94/1258, appeal reference number PL17.096766, which required that, prior to the occupation of the first dwellinghouse, the subject site was to be provided as open space and finished to the satisfaction of the planning authority. The granting of planning permission for the proposed six dwellinghouses would result in a permanent loss of lands for 'open space' and a consequential permanent loss of recreational amenity for the wider Tudor Grove and Tudor Heights development in which the open space was intended to serve. Permitting the development would reduce the recreational amenities for the area to an unacceptable level and would also set an undesirable precedent in terms of non-compliance with key planning conditions. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development comprising six dwellinghouses on a site which was indicated for use as 'open space' for residential development as granted permission under planning register reference number 94/1268 / An Bord Pleanála appeal reference number PL17.096766, would be contrary to Policy SOC POL 39 which seeks to resist the loss of existing public open space, unless alternative recreational facilities are provided in a suitable location' and SOC POL 42 which seeks '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' of the Meath County Development Plan 2013 – 2019. The proposed development would seriously injure the amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

Patricia Calleary
Senior Planning Inspector

12th February 2018