



## Inspector's Report ABP301929-18

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<b>Development</b>	Construction of a two-storey dwelling.
<b>Location</b>	Site No. 111 Drisin, Ballymoneen Road, Knocknacarra, Galway City.
<b>Planning Authority</b>	Galway City Council.
<b>Planning Authority Reg. Ref.</b>	18/11.
<b>Applicant(s)</b>	John Burke.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party -v- Refusal.
<b>Appellant(s)</b>	John Burke.
<b>Observer(s)</b>	(i) Mark Costello, (ii) Lorraine Kelly, (iii) Julie-Anne Brown O'Flaherty, (iv) John Lynch, (v) Drishin Management Company, (vi) Cathal Bowe, (vii) Margo and Joe Ryan, (viii) John Colohan, (ix) Robert McConkey and Noel Downes.
<b>Date of Site Inspection</b>	19 <sup>th</sup> September, 2018.
<b>Inspector</b>	Paul Caprani.

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## 1.0 Introduction

ABP301929-18 relates to a first party appeal against the decision of Galway City Council to issue notification to refuse planning permission for the construction of a two-storey detached dwelling within and area of open space in a recently constructed residential estate at Knocknacarra, west of Galway City. Galway City Council issued notification to refuse planning permission on the grounds that the proposed dwellinghouse is located in a designated area of public open space and would materially contravene a number of conditions associated with the parent permission Reg. Ref. 08/593. It is also argued that the proposed development would adversely affect the public realm by virtue of reducing the amount of open space available within the housing scheme. Nine observations were submitted all of which supported the decision of the planning authority.

## 2.0 Site Location and Description

- 2.1. The subject site is located within a residential estate known as 'Drisin' in the suburban area of Knocknacarra to the west of Galway City. The suburban residential estate of Drisin comprises of a mixture of semi-detached, terrace and duplex dwellinghouses on the western side of the Ballymoneen Road in the north-western environs of Galway City; approximately 5 kilometres west of Galway City Centre. The residential estate that accommodates the appeal site and surrounding residential estates are relatively recent in origin.
- 2.2. The appeal site is located centrally within the estate to the immediate north of the main access road which runs westwards from the Ballymoneen Road through the centre of the estate and links up the Maoilin Residential Estate to the immediate west. The subject site comprises of a rectangular piece of open space approximately 12 metres in width and 32 metres in depth. It is located on the eastern side of a small cul-de-sac which serves four semi-detached dwellinghouses which face eastwards onto the small cul-de-sac and onto the open space. A pair of semi-detached dwellinghouses which face southwards onto the main access road are located to the immediate east of the subject site. The appeal site is currently under grass. A low

metal wire fence with a gate providing access to the open space is located along the southern boundary. Evidence from my site inspection indicated that the area is currently actively used as an area of active recreational space.

### 3.0 Proposed Development

Planning permission is sought for the construction of a two-storey three bedroomed house on the subject site. The dwelling is to form a detached dwelling sitting centrally within the area of open space. The dwellinghouse is to incorporate a mixture of a nap plaster finish with stone cladding on the front elevation and is to rise to a maximum ridge height of just under 8.2 metres.

### 4.0 Planning Authority's Decision

#### 4.1. Decision

4.1.1. Galway City Council issued notification to refuse planning permission for two reasons which are set out in full below.

1. *If permitted, the construction of a dwelling within an established and specifically designated area of public open space would materially contravene planning reference 08/593, specifically conditions 2 and 3 of that permission. In addition, such development would result in the loss of a significantly important non-formal area of open space within the housing development of Drisin, thereby reducing the total level of communal open space available, adversely impacting upon the residential amenities contrary to Galway City Council Development Plan 2017 – 2023, Chapter 11- requirements for the provision of such spaces and would adversely impact upon the proper planning and sustainable development of the area.*
2. *The proposed construction of a dwellinghouse on this designated and established area of communal open space would be contrary and contravene the Galway City Council Development Plan 2017 – 2023, Chapter 8(7) - Urban Design as it is the policy of the development plan to protect and enhance urban design and protect the quality of the public realm of existing areas. The design of the proposed development is such that it would*

*adversely impact on the public realm, has a poor contextual reference to the surrounding area rendering the proposal an unsatisfactory development which would detract from the existing high quality urban/public realm environment established at this location and would be injurious to the residential amenities and proper planning and sustainable development of the area.*

## 4.2. Planning Authority Assessment

- 4.2.1. The application was lodged with Galway City Council on 11<sup>th</sup> April, 2018. A covering letter with the application states that the site was previously used as a playground under the parent permission however this playground was removed due to anti-social behaviour and has remained fenced off since. Maoilin, which is an extension to the residential estate of Drisin, has an extensive playground area which can cater for the residents of Drisin.
- 4.2.2. A letter from the registered owner of the common areas at Drisin states that he has no objection to the proposed application lodged.
- 4.2.3. A letter from **Irish Water** stated that there is no objection to the proposals.
- 4.2.4. A number of **observations** were submitted from residents in the area, all of which object to the proposed development on the grounds that the subject site provides important communal open space for the residents of the estate.
- 4.2.5. The **planner's report** dated 31<sup>st</sup> May, 2018 notes the various third-party objections and observations to the proposed dwellinghouse. The report notes that the site was inspected on the date of the planner's report and it was apparent that the site was clearly used as communal open space. The report sets out details of the planning history and notes that permission was granted under Reg. Ref. 08/593 for the development of two dwellings and the provision of an area of communal open space. It is stated that the applicant originally sought four units but the loss of the communal open space was not deemed to be acceptable and the applicant submitted revised details for two dwellings and the incorporation of a functional non-formal area of communal open space. The requirement of this area for communal open space was also specified by way of condition. It is considered that the retention of the area of open space is critical as the housing development suffers from a lack of non-formal areas of communal open space. While there may or may not have been anti-social

behaviour issues associated with this space, the space is now currently overlooked by housing to the west and this provides a degree of passive surveillance which is appropriate for the use of the lands as private open space. For the above reasons it is recommended that planning permission be refused. In its decision dated 31<sup>st</sup> May, 2018 Galway City Council refused planning permission for the reasons set out in full above.

## 5.0 Planning History

- 5.1. Details of the parent permission are contained in a pouch to the rear of the file.
- 5.2. Under **Reg. Ref. 03/749** planning permission was granted for 108 residential units and a crèche together with associated works. The subject site was located in the north-western boundary of the original application and it was proposed to incorporate an access road to the north-west together with an area of communal open space.
- 5.3. Under **Reg. Ref. 08/593** a further application was sought for planning permission for the construction of two semi-detached dwellings to the immediate west of the subject site and the retention of the public open space which is the subject of the current application for a kick about area and playground area. Galway City Council granted planning permission for the proposal on 31<sup>st</sup> March, 2009.
- 5.4. Condition No. 2 required that the communal open space and the two permitted houses shall be developed in accordance with details received on 6<sup>th</sup> March, 2009.  
**Reason:** In the interest of residential amenity and the proper planning and sustainable development of the area.

Condition No. 3 required that the communal open space, children's play and kick about area shall be fully installed and completed to the satisfaction of the Planning Authority and accessible to the residents of the housing estate within 1 year of the date of the final grant of permission unless otherwise agreed in writing with the Planning Authority.

**Reason:** In the interest of residential amenity and the proper planning and sustainable development of the area.

## 6.0 Grounds of Appeal

- 6.1. The decision was appealed on behalf of the applicant Mr. John Burke, by Fergal Bradley and Company, Chartered Building Surveyors. The grounds of appeal set out the planning history associated with the site (see above). Reference is made to the planner's report in respect of Reg. Ref. 08/593 which required that the same amount of communal open space be provided at this location as that proposed under the earlier application Reg. Ref. 03/749. It is stated that the communal open space, children's play area and kick about area have been completed to the satisfaction of the Planning Authority and a letter to this effect from Galway City Council is attached to the grounds of appeal.
- 6.2. It is stated however that the communal open space in question has attracted anti-social behaviour. Since July 2012 the communal open space and kick about area has been enclosed with fencing and is locked.
- 6.3. The grounds of appeal argue that an area equivalent to 16.54% of the site has been set aside for communal open space and this excludes the area of the application site.
- 6.4. The development of the adjacent Maoilin development which is accessed via the Drisin development (and is essentially Drisin - Phase 2) has resulted in an overall common open space taking both areas together of 16.3% which is in excess of the requirement of Galway City Council Development Plan.
- 6.5. It is also argued that the area in question is neither communal or open as suggested in Galway City Council's planning report. It therefore cannot be considered to be significantly important as public open space.
- 6.6. It is argued that the proposed development would contribute to the residential amenity as the existing secured perimeter means that the open space is not in use and does not currently provide any amenity value. Furthermore, the proposal is fully in accordance with the National Planning Framework which seeks to target a significant proportion of future development on brownfield land and infill sites within existing urban areas. For the above reasons it is argued that the proposed development is appropriate and the decision of the Planning Authority should be overturned and planning permission granted in this instance.

## 7.0 Appeal Responses

7.1. Galway City Council submitted the following response to the grounds of appeal:

- The land is a composite open space serving the residents of Drisin.
- The proposal to remove the open space is completely contrary to the policies and standards set out in the Galway City Development Plan which seeks to develop sustainable neighbourhoods, promote health and wellbeing and enhance the green network of the city.
- The provision of communal open space at this location was always intended by the local authority and this is evidenced by the conditions attached to the grant of planning permission.
- The open space is strategically located adjacent to existing houses and is well overlooked by development to the west.
- The lands do not constitute an infill site but form part of an open space network serving the residential area.
- Any loss of open space at this location would compromise the quality of the overall open space serving the Drisin development.
- There is ample residentially zoned land in the wider area which can accommodate the applicant's needs without resorting to the removal of designated open space.

## 8.0 Observations

8.1. A total of 9 observations were submitted, all of which support the decision of the Planning Authority to refuse planning permission. The observations were submitted by:

- Mark Costello
- Lorraine Kelly
- Julie-Anne Brown O'Flaherty
- John Lynch



- Drishin Management Company CLG
- Cathal Bowe
- Margo and Joe Ryan
- John Colohan
- Robert McConkey and Noel Downes

8.2. The issues raised are set out in grouped format below.

- The open space calculations as set out in the grounds of appeal which suggest that 16% of the entire site have been given over to public open space is not correct. Most of the land involves strips of planted/landscaped land which is not suitable for active recreational use. It is also stated that it is inappropriate and disingenuous to calculate the public open space provision by amalgamating the Drisin Estate and the Maoilin Estate. It is stated that the Maoilin Estate is a completely separate estate and does not represent an extension of the Drisin Estate. It was built by different developers, under a separate planning permission, and incorporates a separate management company to the Drisin Estate.
- Most of the observations acknowledge that there was anti-social behaviour previously on the subject site. However, this anti-social behaviour occurred when the site was fenced off with hoarding. Since the open space has been opened up and overlooked by the newly constructed houses associated with the Maoilin Estate; the open space has been actively used and is of great benefit to the community.
- It is untrue to suggest that the space is presently cordoned off and not currently used at present. Many of the observations state that this open space has been actively used for a number of years since the hoarding was removed. One observation submitted (Observation by Cathal Bowe) shows photographs of the open space being used for family recreation days and for active recreational use.
- The green area is the most important amenity space within the estate and is actively used by children playing football and is also used for other community

events. The removal of this play area would force the children to play on adjoining busy roads.

- The applicant incorrectly states in the planning application form that he is the owner of the lands in question.
- The additional dwelling will result in additional demand on already stressed infrastructure serving developments. Specific reference is made to inadequate sewage infrastructure.
- The construction of the neighbouring Maoilin Estate has resulted in the area in question being adequately overlooked by way of passive surveillance and this in turn, has eliminated the potential for anti-social behaviour.
- The construction of a dwelling will in no way enhance the amenities of the estate as suggested in the grounds of appeal. The proposed development will also give rise to overshadowing of the garden of the adjoining house to the east of the open space.
- Contrary to what is suggested in the grounds of appeal, the subject site is not a brownfield site but forms an important recreational area within the estate.
- It is inappropriate that children would be forced to go to another housing estate to actively play. This situation would arise if the subject site was built on.
- Granting planning permission for the house in question would contravene the decision under Reg. Ref. 08/593 which stipulated that the area be reserved as public open space.
- An observation from the Drishin Property Management Company stress that it is very supportive of keeping the area in question as active open space.
- The drawings submitted with the grounds of appeal do not actively reflect what was built on the ground.

## 9.0 Development Plan Provision

- 9.1. The site is governed by the Galway City Development Plan 2017 – 2023. The subject site is zoned for residential development in the development plan. However,

the Board should note that the entire area of the Drisin residential estate including areas developed for public open space are governed by the residential zoning objective in the land use zoning map associated with the plan.

9.2. In terms of communal open space Section 11.3.1(c) of the development plan states that communal, recreational and amenity space is required at a rate of 15% of the gross area of the site.

## 10.0 Planning Assessment

### 10.1. Introduction

10.1.1. I have read the entire contents of the file, visited the site in question and have had particular regard to the issues raised in the grounds of appeal and the observations submitted in respect of the application and appeal.

10.1.2. The grounds of appeal challenge the decision of the Planning Authority on four separate grounds namely:

- That the proposed development complies with communal open space standards as set out in the development plan.
- The area of open space has not been actively used for a period in excess of 6 years.
- The proposed development would contribute and enhance the amenities of the area.
- Open space provision should be assessed in the context of the overall residential development of the Drisin and Maoilin residential estates.

10.1.3. In relation to the first issue, the grounds of appeal suggest that approximately 16.5% of the site has been given over to communal open space requirements within the development. I have not systematically measured the area of lands within the overall layout which has been given over to communal open space. However, I do know that the applicant has provided details of the open space provision in two separate maps appended to the grounds of appeal, one of which relates to the Maoilin residential estate while the other relates to the Drisin residential estate. It appears however that the drawings submitted are based on older layouts which may not necessarily

correspond to the current layout on the ground. Perhaps more importantly much of the open space referred to relate to small areas of incidental open space located around areas of car parking and also involve narrow strips of land between dwellinghouses. While these areas of open space provide an important contribution to the public realm in terms of visual amenity, they offer very little scope for active recreational use in the form of an informal kick about area.

- 10.1.4. Whether or not the open space provision complies with the minimum requirement of 15% as set out in the development plan, this in my view is a secondary consideration. The qualitative aspect of open space provision should supersede any quantitative requirements as set out in the Plan. The development plan makes it clear that *“the recreational facility should be provided to serve the needs of the residents and should reflect the profile of future residents, and the scale and type of development”*. Indicative examples of recreational facilities for different sizes of residential developments is set out in Table 11.2 of the development plan. Where the number of residential units exceed 100 as in the case of the Drisin development, examples of recreational facilities which should be provided include a playground, a playing pitch and a formal park. It is appropriate therefore that some type of playing pitch/informal kick-about area should be provided as part of the development.
- 10.1.5. Even the larger areas of open space in the Maoilin estate are somewhat ornamental in character and incorporate footpaths which traverse the open space and incorporate areas of planting throughout the space which is not amenable to active recreational pursuits such as creating informal pitches for ball sports.
- 10.1.6. The grounds of appeal also suggest that the area in question is neither communal nor is it open and has not been used for a period in excess of 6 years and as such cannot be considered to be either significantly important for recreation purposes.
- 10.1.7. I have inspected the site in question. I did not observe any play activity during my site inspection (my site inspection was carried out during school time). It was however evident to me that the area of open space is actively used. I refer the Board to the photographs attached. It clearly indicates bald patches in the grass which suggests that the green area is used for football, with the bald patches being attributed to goal keeping areas. Furthermore, a formal sand pit area is located within the open space. It is also apparent from photographs attached to the

observation that the area of open space has been used by the local community to facilitate community play days. Evidence has been produced which indicates that the area of open space has accommodated bouncy castles etc. I therefore do not accept the contention set out in the grounds of appeal that the open space has been unused for a period in excess of 6 years.

10.1.8. While the area of open space is partially fenced, it is clear from the photographs attached that there are open areas along the western boundary which permit ease of access. The designated gate on the southern boundary of the site was also open during the time of my site inspection. There can be no doubt in my mind that the area of open space is actively used on a regular basis.

10.1.9. I do not accept the contention set out in the grounds of appeal that the development of the area of open space would in any way improve the residential amenities of the area over and above that associated with open space provision. It is clear that the existing site provides a much-needed informal area of usable active open space for the playing of games etc. The fact that the area is located within a small cul-de-sac and is fenced off from the main road is most beneficial from a safety perspective.

10.1.10. A number of observations argue that the provision of an additional dwelling would result in an unacceptable strain on service provision including sanitary infrastructure serving the estate. No evidence has been produced to support this contention. However, it is my opinion that the area of open space in question would better serve the residential amenities of the area than the provision of an additional dwellinghouse. It cannot be argued, having regard to the photographs attached, that the open space in question constitutes an eyesore. The subject site is well kept and maintained.

10.1.11. Furthermore, I do not accept the appellant's contention that the proposed development is in accordance with the National Planning Framework which seeks to provide significant proportions of future development within existing built up areas. I acknowledge that a major strategic consideration of the National Planning Framework is to consolidate urban growth by creating more compact development in existing towns and cities. However, it cannot be reasonably argued in my opinion, and as suggested in the grounds of appeal, that the subject site constitutes a brownfield site. The subject site does not constitute an unused vacant residual piece

of land which is suitable for infill development. On the contrary the subject site provides a designated area of public open space which is currently in active recreational use and forms part of a network of open space area serving the Drisin housing development. The subject site is all the more important as it provides one of the few areas of open space which can facilitate an informal kick-about area within the estate.

10.1.12. Finally, the grant of planning permission under Reg. Ref. 08/593 is clear and unambiguous in requiring that the communal open space as indicated in the drawings (i.e. the subject site) would be developed for such purposes in order to serve the community. I would consider that the construction of a dwellinghouse on the subject site would clearly contravene Conditions 2 and 3 of the said permission and as such, it would be contrary to the proper planning and sustainable development of the area.

## **11.0 Conclusions and Recommendation**

Arising from my assessment above I consider the proposed development to be contrary to the proper planning and sustainable development of the area and I recommend that An Bord Pleanála uphold the decision of Galway City Council and refuse planning permission for the development of a dwelling on the subject site.

## **12.0 Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the 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.

## **13.0 EIA Screening Assessment**

Having regard to the nature of the development comprising of a single dwellinghouse in an urban area it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an

environmental impact assessment can, therefore, be excluded by way of preliminary examination.

## 14.0 Decision

Refuse planning permission based on the reasons and considerations set out below.

## 15.0 Reasons and Considerations

1. It is considered that the proposed construction of a dwellinghouse on the subject site would contravene materially Conditions Nos. 2 and 3 to an existing permission granted under planning register reference number 08/593 by Galway City Council which required that the subject site be used as designated open space to serve the housing development. The grant of planning permission for the proposed dwellinghouse 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. It is considered that the proposed dwellinghouse would result in the loss of communal public open space which is actively used for recreational purposes. The proposed development would therefore seriously injure the residential amenities of residents in the Drisin residential estate and would, therefore, be contrary to the proper planning and sustainable development of the area.

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Paul Caprani,  
Senior Planning Inspector.

22nd November, 2018.