



An
Bord
Pleanála

Inspector's Report ABP 303215-18

Development	6 houses
Location	Ard Aoibhinn, Laherfineen, Innishannon, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	18/06518
Applicant	Dunboy Construction and Property Developers Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. Refusal
Appellant	Dunboy Construction and Property Developers Ltd.
Observers	1. Brendan Dempster 2. Thomas Davis 3. Donal Linehan 4. Federico Gilli 5. Aidan & Mairead O'Connor

Date of Site Inspection

28/02/19

Inspector

Pauline Fitzpatrick

1.0 Site Location and Description

The site, which has a stated area of 0.2385 hectares, is roughly rectangular in shape within the Ard Aoibhinn housing estate, which is accessed from Cork Road to the north of Innishannon village centre. The housing scheme comprises of a mix of terraced, semi-detached and detached two storey dwellings. It is largely complete with the remaining detached units nearing completion.

The site is immediately to the west of the said units under construction and slopes down from same to Cork Road which bounds the site to the east from which access is currently available to facilitate construction traffic. The roadside boundary is delineated by a stone and earthen bank with mature trees. The site is being used for purposes associated with the adjoining construction. It is bounded to the north and south by single dwellings with frontage onto Cork Road. Church Hill which comprises of a small development of detached houses, in addition to one off dwellings are on the opposite side facing onto the site.

The overall Ard Aoibhinn estate is served by a central open space area with smaller pocket spaces and landscaped strips throughout.

2.0 Proposed Development

The proposal entails the construction of 6 no. semi-detached dwellings (2 no. house types) backing onto the roadside boundary to Cork Road with access from the existing Ard Aoibhinn estate.

The existing roadside boundary is to be retained with 1.8 metre high concrete post and timber panelling walls to be constructed inside same forming the rear boundary of the dwellings.

The application is accompanied by

- Design Statement
- Correspondence from Irish Water regarding pre-connection enquiry.
- Correspondence that the wastewater treatment plant serving the estate has the capacity to accommodate the development.
- Exemption from Part V obligations.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for the above described development for one reason which can be summarised as follows:

The proposal would materially contravene the terms and conditions of the parent permission as the development would encroach on lands which have been designated as public open space. The proposal would set an undesirable precedent in this residential estate. In addition, the proposal by reason of its elevated position above the local road, the layout and design of houses and their close proximity to the existing dwelling to the south, would be out of character with the pattern of development in the area, would be overbearing on the existing dwelling and would seriously injure its residential amenities and the visual amenities of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Assistant Planner in her report notes that construction on the waste water treatment plant for the village has not commenced. It is expected to be completed in 2020. The proposal involves the site of house no. 39 and an area of public open space. While it may not presently function as an open space area it was designated as such in the permitted scheme. The proposal will result in loss of open space and there are concerns that it would set an undesirable precedent for similar type developments in this residential estate. There are also issues with the layout in that the dwellings back onto the public road. They would be approx. 4-5 metres higher than the public road and would be imposing and overbearing when viewed from same. Concerns have been raised about the proposed raising of the site and the ability of the existing boundary ditch to contain same. A retaining wall with appropriate boundary treatment will be required. This raises concerns regarding visual impact. A refusal of permission for one reason is recommended. The subsequent report from the Senior Executive Planner endorses the recommendation.

3.2.2. Other Technical Reports

Public Lighting recommends further information on design for the public lighting. Conditions detailed should permission be granted.

Estates recommends further information on storm water system, boundary treatments including details on retaining structures and clarification of construction site access and duration of same.

Liaison Officer has no comment

3.3. Prescribed Bodies

Inland Fisheries Ireland states that the ultimate method of disposal of effluent from the development following treatment in a private WWTP is unclear. As the public sewerage system is overloaded the planning authority is requested to attach a condition precluding the occupation of the scheme until such time as the system is upgraded and fully commissioned or an alternative method of disposal has been put in place.

3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised relate to loss of open space, overdevelopment, visual impact, impact on amenities of adjoining property, proximity of dwellings to the road, suitability of house design, road and public safety, non-compliance with conditions attached to the parent permission, previous use of the site, effluent disposal, construction traffic and access and absence of footpath on Cork Road.

4.0 Planning History

2006 - 99/5878 – permission granted for 52 dwellings and site development works. Duration of permission was for 8 years.

Note: As per correspondence from the planning authority the file is not available.

2007 – 07/10356 permission granted for temporary waste water treatment plant

2014 - 14/4845 – extension of duration of permission 99/5878 until 01/11/19.

5.0 Policy and Context

5.1. Development Plan

Bandon Kinsale Municipal District Local Area Plan

Innishannon is designated as a key village and the site is within the development boundary.

Objective DB-01 – within the development boundary encourage the development of up to 150 additional dwelling units within the plan period.

5.2. Natural Heritage Designations

The site is over 10 km to the north of Courtmacsherry Bay SAC and SPA.

5.3. Environmental Impact Assessment

Having regard to the nature and extent of the proposed development within the development boundary of Innishannon there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The submission by Joe Bonner Town Planning Consultant on behalf of the 1st Party against the planning authority's notification of decision to refuse permission and which is accompanied by supporting plans can be summarised as follows:

- The applicable density for the site as per the County Development Plan Objective HOU 4-1 is between 12 and 25 units per hectare. The overall development area excluding the area of the temporary wastewater treatment plant is 3.377ha and the total number of dwellings, including the 5 additional

houses (6 no. new units in place of 1 permitted) is 57 giving a density of 16.88 units per hectare.

- The original site area of Ard Aoibhinn was 3.377 ha. It had 0.805ha of public open space including the area where the proposed houses are to be located. The open space was to be 23.84% of the total site area. The proposal will result in the reduction of public open space to 19.72%. This exceeds the 12-18% requirement set out in section 5.5.7 of the County Development Plan.
- The planning authority has permitted alterations to approved schemes, including houses on what was deemed to be open space. Application refs. 18/4858 & 18/6433 refer.
- The functionality of the open space is queried as it would have had an 8 metre level difference across a 50 metre width equating to a 16% gradient. It would have been unusable. Therefore, there will be no loss of active public open space and no contravention of any condition.
- The reference to material contravention in the reason for refusal refers to the terms and conditions of a planning permission and not the development plan. Therefore section 37(2)(b) is not applicable.
- Amendment permission can be granted without being a material contravention of the parent permission. In order to materially contravene the previous permission the amendment must be material. It is considered that the planning authority has failed to demonstrate the materiality of the alleged contravention. The planning authority has failed to refer specifically to any of the 87 conditions attached to the parent permission. The space could not have fulfilled the requirements of condition 73 pertaining to multi games area as it is too small, too steep and too remote from the houses
- The part of the Ard Aoibhinn residential development completed to date has never had the use of the open space area. The existing houses have used the substantial open space that is located in the centre of the estate without any significant loss of amenity.

- The proposal complies with all of the requirements of the LAP and County Development Plan. That is why the wording used by the planning authority is so vague.
- The proposal would not set an undesirable precedent. No other open spaces within the estate are intended to be developed.
- The planning authority has no legal authority to hold the applicant to a higher standard than set out in the adopted development or to a standard that is not applied consistently to other developers.
- It is not reasonable to refuse permission because a future application to develop other open space could be submitted. Legal judgement in *Kelly v An Bord Pleanala* cited.
- The proposed house design is comparable to those developed to date.
- There is a wide variety of building lines and heights along the road bounding the site. The boundary will be infilled with new trees to replace those removed to allow for the temporary construction access. The houses will not be visible from the road. The applicant has no objection to a condition requiring dense planting.
- The removal of a 2 metre wide strip as per the recommendations of the Estates report would result in the loss of all of the mature trees. The boundary will be reinstated in such a manner that there will be no potential for slippage. A 2 metre wide strip is to be left outside of the rear gardens and any future works can be facilitated.
- The applicant has no objection to a condition regarding alternative boundary treatments or allowing the specific details to be agreed in writing with the planning authority prior to commencement of development.
- The finished floor level of the dwelling to the south is below that of the nearest proposed dwelling. A 2 metre high fence is to be erected along the site boundary so it will not be possible to see into the existing property. A separation distance of 20.6 metres is to be maintained. There are no windows in the gable that would overlook the dwelling. The dwellings would have an oblique view of the front of the house which is open to public view

from the road. The dwellings would be to the north and therefore would not cause overshadowing.

- The existing temporary wastewater treatment plant can accommodate the additional load.

6.2. Planning Authority Response

None

6.3. Observations

Observations have been received from

1. Brendan Demptser
2. Thomas Davis
3. Donal Linehan
4. Federico Gilli
5. Aidan & Mairead O'Connor

The submissions can be summarised as follows:

- The elevated position above the local road and the layout and design of the houses are out of character with the pattern of development in the area and will have an adverse visual impact. The proposal will remove trees and will change the character of the road adversely impacting the rural character of Innishannon.
- The dwellings would impact nearby dwellings by reason of overlooking, loss of privacy and overshadowing.
- The existing boundary ditch is fragile with concerns as to whether the current sloped site can contain the loading proposed by the dwellings. There is also the potential for slippage. It is difficult to see how current hedging and trees would not be affected and undermined by the proposal.
- The proposal would constitute overdevelopment of the site. The dwellings are too close to the roadside boundary and will have very small private gardens. There are safety issues arising with the dwellings so close to the public road.

- The proposal would contravene the terms and conditions of the parent permission ref. 99/5875. The area was designated as public open space.
- It will result in inadequate open space which will significantly impact on the residential amenity of future residents.
- Many of the areas counted in the developer's calculation of open space are unusable due to the steep gradient of the land and their proximity to parking areas.
- The dwelling design is significantly different from that built to date.
- The proposal will result in increased traffic and congestion in the housing estate accessed via one entrance from the public road.
- Construction traffic will have to access the site from the main estate entrance giving rise to safety and nuisance issues.
- Compliance issues with conditions attached to the parent permission detailed.
- Part of the site was previously quarried. The details given on the planning application form are incorrect.
- A retaining wall was to be built between the site and the dwelling to the north. It has not been done and results in a safety hazard.
- The existing treatment plant serving the estate is inadequate.
- The proposal does not address the impact it will have on the protected status of the Bandon River.

7.0 Assessment

I consider that the issues arising can be assessed under the following headings:

- Compliance with Permission 99/5878
- Amenities of Adjoining Property
- Other Issues

7.1. Compliance with Permission 99/5878

The site in question comprises the north-eastern most corner of the Ard Aoibhinn housing development. To date a mix of 51 terraced, semi-detached and detached dwellings have been constructed with works nearing completion on the dwellings immediately to the west of the appeal site. The permission granted in 2006 under 99/5878 for an 8 year duration (and extended under ref. 14/4845) allowed for 52 no. dwellings. A copy of the permitted layout accompanies the 1st Party appeal submission.

The site entails the site of the remaining undeveloped dwelling as permitted (No.39) and an area which was originally designated as public open space.

As permitted, the overall scheme was to be served by a centrally located public open space in addition to the site subject of the appeal, with three further pocket areas/landscaped strips. To date the said central space has been developed and equates to approx. 3,500 sq.m with two small areas to the north and south equating to c. 570 sq.m. A further landscaped strip to the north of the main estate access and visitor parking area equates to approx. 700 sq.m.

As can be extrapolated from the details accompanying the appeal the open space to be developed at the location of the appeal site was to form part of a larger area with the area to the south of the access road to be developed for such purposes. With the omission of the appeal site the remaining strip to the south of the access road would equate to in the region of 800 sq.m. The appeal site, itself, has a stated area of 0.2385 hectares.

On the basis of the above I estimate that the open space provision within the estate to date is in the region of 5570 sq.m. which equates to c. 16% of the site area and not 19.72 % as put forward by the agent for the applicant. Notwithstanding, this

figure is within the 12-18% requirement as set out in section 5.5.7 of the County Development Plan. This reflects the requirements of the Council's Recreation and Amenity Policy against which the development would have originally been assessed. The provision would also accord with the guidelines on Sustainable Residential Development in Urban Areas which recommends 15% open space in green field sites. The said guidelines state that it is necessary for planning authorities to take a more flexible approach to quantitative open space standards and put greater emphasis on qualitative standards. In this regard I note that the appeal site, in the northern-eastern most corner, is not an optimum location at a remove from the majority of the scheme as developed and would not have had the benefit of passive surveillance due to the absence of any dwelling overlooking same. Due to the topography the area would have to be raised to allow for its usability. As such I do not consider that the omission of the space from the overall scheme would have a material and adverse impact on the residential amenities currently enjoyed in view of the existing open space provision developed to date.

Whilst the proposal will signal a departure from the layout as originally permitted this is not precluded in law.

7.2. Amenities of Adjoining Property

I would suggest that the delineation of the site as open space in the original layout may have been dictated by both the original site falls at this location and the existing dwellings bounding the site immediately to the north and south with the objective of protecting their amenities.

As a consequence of the site falls in a south-easterly direction and to facilitate the development it is proposed to infill the site so as to increase levels by up to 2.5 metres in the vicinity of the southern boundary. This will result in a differential in finished floor levels, between existing and proposed, of in the region of 2.5 metres. The nearest proposed two storey dwelling will have a ridge height of 6.57 metres over that of the existing single storey dwelling to the south. Such a juxtaposition of single and two storey dwellings is not uncommon. Due to the site layout the proposed dwellings are to be orientated towards the existing dwelling with a 20 metre setback to be maintained. A 2 metre high boundary fence backed with planting is proposed (although a 1.8 metre high fence is delineated on the section

drawings). I submit that the amenities of the existing dwelling would not be adversely impacted upon.

As the site is lower than that to the north with the boundary delineated by a line of mature trees providing extensive screening, I do not consider that the amenities of the existing property would be adversely affected in terms of overlooking or loss of privacy. A retaining wall is proposed as part of the proposed development although the Engineers Drawings referred to on the site layout plan have not been submitted. I note that the owner of the property to the north in his observation to the appeal detailed issues in terms of provision of the retaining wall along this boundary as part of the residential development constructed to date.

With a stated level of 52.578 metres at the roadside boundary the finished floor levels of the dwellings consequent to the site infilling would be in the region of 1.922 metres higher. The plots are to be slope down to the roadside boundary with the rear walls to be setback from the roadside hedgerow. The site is within the speed limit of the village within an area characterised by a mix of housing schemes and one off housing. Subject to the retention and augmentation of the said roadside boundary, and its reinstatement at the location of the temporary construction access, I do not consider that the dwellings would present such a visually intrusive element as to warrant refusal of permission.

The dwellings to the east of the site are separated from the appeal site by a public road with a setback of approx. 20 metres to the nearest dwelling in Church Hill directly opposite. In view of the site context with the public realm inbetween, I do not consider that the said properties would be adversely impacted by way of overlooking or loss of privacy.

As noted by the agent for the applicant the proposal would not, in itself, set an undesirable precedent in that each proposal would be required to meet the requirements in terms of residential development inclusive of open space provision.

7.3. Other Issues

The existing estate is currently served by a temporary waste water treatment plant until such time the new Innishannon treatment plant is commissioned. Consent for the plant has been secured and as per the planning reports on file is due to be

completed in 2020. A letter accompanying the application states that there is sufficient capacity in the temporary plant to accommodate the proposal.

The proposed dwelling design is acceptable and would complement that prevailing in the estate as completed to date. Each dwelling is to be served by adequate private open space and parking.

The estate roads were designed and developed to accommodate a scheme of 52 dwelling units. I consider that the additional vehicular movements from the proposed net increase of 5 units can be satisfactorily accommodated.

Construction traffic through the existing estate may arise as a consequence of the development but will be temporary in nature and, should the Board be disposed to a favourable decision, a construction management plan could be sought by way of condition in which matters pertaining to operational hours and traffic management would be required to be dealt with.

The Board has no remit in terms of compliance with conditions attached to the parent permission. This is a matter for the planning authority.

Appropriate Assessment

Having regard to the nature and scale of the development within the development boundary of Innishannon and 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.

8.0 Recommendation

Having regard to the above I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the nature and scale of the development proposed within an existing residential estate and to the resultant public open space to be maintained to serve the said estate it is considered, subject to compliance with the conditions set

out below, that the proposed development would not seriously injure the amenities of the area or the amenities of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The external finishes of the dwellings shall be the same as the finishes of the dwellings constructed immediately to the west (houses numbered 40 and 41).

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. The internal road network serving the proposed development including turning bays, junctions, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

5. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of visual and residential amenity.

7. All rear gardens shall be bounded by timber panel fences, 1.8 metres in height, constructed with concrete uprights.

Reason: In the interests of residential and visual amenity.

8. Prior to commencement of development the following shall be submitted to the planning authority for written agreement:

- (a) Plans and details of the retaining wall to be erected along the northern boundary.
- (b) Plans and details of the boundary treatment along the southern boundary.
- (c) Details of earthworks including soil and subsoil cross-sections, retaining wall, if necessary, and relationship to the existing eastern site boundary to Cork Road.

Reason: In the interest of residential and visual amenity.

9. The hedgerow along the eastern boundary to Cork Road shall be retained. Measures for the protection of the hedgerow and a scheme for its augmentation including the closure of the existing construction access and timescale for implementation shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction

practice for the development, including access arrangements, hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

11. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

12. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Pauline Fitzpatrick
Planning Inspector

March, 2019