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Pleanála

## Inspector's Report ABP 304199 - 19.

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<b>Development</b>	Construction of two houses and associated site development works
<b>Location</b>	Fearann Ri, Doughiska, Galway.
<b>Planning Authority</b>	Galway City Council
<b>P. A. Reg. Ref.</b>	18/316
<b>Applicant</b>	Golden Maple Investments
<b>Type of Application</b>	Permission
<b>Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party X Refusal
<b>Appellant</b>	Golden Maple Investments
<b>Date of Site Inspection</b>	25 <sup>th</sup> June, 2019.
<b>Inspector</b>	Jane Dennehy

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## 1.0 Site Location and Description

- 1.1. The site has a stated area of 2300 square metres, is a roughly rectangular in shape, surfaced in hard standing and is located between two houses within the Fearann Ri residential development in Doughiska, Galway. It is overlooked from the west side by the gable end of No 108 Fearann Ri in which there are windows at ground floor level and a landing window at first floor level. The gable end of the dwelling to the east side(No 94) is a blank elevation. To the rear north side there is a three-storey block which has a blank south facing gable end adjoining the northern site boundary. Concrete block capped walling is located along the west and north boundaries and timber fencing is along the eastern boundary. At the front and south east side there are concrete blocks. A small landscaped space is located on the road space at the front closing off vehicular access to and from the area to the east of the site.
- 1.2. The application site comes within “Phase 2” of the overall Fearann Ri residential development on the east side of Doughiska Road which is divided from Phase One to the south by the central open space/parkland serving the overall development

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for the construction of two houses on the site
- 2.2. A further information submission lodged on 30<sup>th</sup> January, 2019 includes confirmation that other than ownership of the site,(since August 2018) the applicant has no legal interest in the Fearann Ri development; proposals for three ‘on street’ parking spaces and a statement that there would be a surplus of four spaces for the overall development, revised house design to include rear extensions that would increase the floor area to seventy three square metres, and a Section 96 exemption certificate.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated, 15<sup>th</sup> March, 2019 the planning authority decided to refuse permission on the basis of the two reasons which are reproduced below:

1. *“The proposed development constitutes part of an overall development which was laid out with the provision of communal facilities including shared car parking to be availed of by the residents of the development. The site of the current proposal in addition to the adjacent roads was subsequently the subject of a taking in charge procedure under Section 11 (1) of the Roads Act 1993 as confirmed by City Council Meeting of 12<sup>th</sup> September, 2016. In this regard the applicant does not have sufficient interest or consent from all interested parties to make an application to change the use from the current shared supporting facility of the adjoining residential development.”*
2. *“The site of the proposal is part of the shared communal facility laid out in the original design of the development, to permit the development would reduce the facilities available to the existing development while not providing any compensatory equivalent element and is deemed unacceptable and would be contrary to the proper planning and development and negative impact the adjacent residential amenity.”*

### 3.2. Planning Authority Reports

#### Planning Reports

3.2.1. According to the planning officer report on the original application in respect of which a request for additional information was issued:

- Eight parking spaces were shown in the drawings for the parent grant of permission and it is confirmed that the applicant is the owner. (P .A. Reg. Ref. 01/368 refers – Details are available under section 4 below.)
- The houses which have stated floor areas of 59 square metres fall below the minimum requirement of seventy square metres specified in “Quality Housing for Sustainable Communities Guidelines (2007)”

- It is not apparent that the owners have control over the remainder of the development and have consented to the replacement of carparking with residential development on the site.
- Compliance with carparking standards should be demonstrated.
- No element of private open space is provided, the minimum requirement being no less than fifty per cent of the gross floor area of the dwelling.
- A section 96 exemption certificate should have been submitted.

3.2.2. In the report on the further information submission received by the planning authority on 30<sup>th</sup> January, 2019 it is stated that development of site cannot be accepted because the area was designated as a public road within the communal areas taken in charge on 17<sup>th</sup> October, 2016. It is also concluded that the site does not have capacity to accept two dwellings, reference being made to the front building lines of the dwellings to the west side and to the proposed projection forward of the dwellings to the east side.

3.2.3. Further copies of documentation on the planning authority's file forwarded to the Board on 12<sup>th</sup> June, 2019. include copies of internal email correspondence at Galway City and a copy of the Folio GY 123603F issued by the Property Registration Authority and a statement by the planning officer that no report was received from the Drainage Division whereas reports were received from the Recreation and Amenity Section and the Building Control Section.

3.2.4. The attached report of the Recreation and Amenity Section contains a statement that the estate was in very poor condition when it was 'taken in charge' and that it is understood that the site was designed as a communal space and included in the open space provision in the scheme. It is suggested that the matter be clarified.

The Building Control section in its internal report of 9<sup>th</sup> January, 2019 indicates no objection.

## 4.0 Planning History

4.1. According to the planning officer report, the application for the original grant of permission for Phase 1 the Fearann Ri Development under P. A. Reg. Ref. 99/396

comprised a proposal for 315 house and twenty-eight apartments. A Health Centre, Creche, Shop, Office and consulting rooms.

- 4.2. According to the planning officer report, the proposed development under P. A. Reg. Ref. 01/368 comprised a proposal for a reduction of sixteen units in density having regard to the previously permitted development under P. A. Reg. Refs. 682/00, 614/00 and 104/00 resulting in a development of two hundred and fifty units (comprising 832 duplex units, 133 terraced houses, 26 semi detached houses, and two detached houses and outline permission for seven detached house and minor alteration to the roads layout.

## **5.0 Policy Context**

### **5.1. Development Plan**

The operative development plans the Galway City Development Plan, 2017-2013. The site location is within the outer suburban and subject to the zoning objective “R” (Residential)

According to section 11.3.1 a minimum private open space provision, which should not be overlooked from the public road for each dwelling is the equivalent of fifty per cent of the gross floor area.

Carparking standards, in respect of which there are options to accommodate flexibility in residential development layouts are set out in section 11.3.1. (g) some flexibility

## **6.0 The Appeal**

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

An appeal was received from Clarke Construction Ltd on behalf of the applicant on 11<sup>th</sup> April, 2019 according to which:

- It is confirmed that the applicant is the legal owner of the site and entitled to lodge the application.

- Under P. A. Reg. Ref. 01/368, (the grant of permission for Phase 2 of Fearann Ri) the density of the overall development of the entire landholding was reduced from that originally approved. The area to the north side of the central open space comprises a total of 181 dwellings and 345 car parking spaces. The proposed development results in an increase to 183 dwellings and 340 spaces allowing for the replacement of eight spaces on the site area with three on street spaces. This is equivalent to almost two spaces per dwelling on the shared communal basis which significantly exceeds the requirement and parking has never been at issue in the estate.
- When the site was occupied by a caravan there was distress in the neighbourhood and the site was blocked off to prevent further residential use but the site has been entirely underutilised. Development of the site, which is in a rent pressure zone:
  - responds to high demands for residential accommodation:
  - is close to the No 409 bus route which operates at ten-minute intervals connecting the locality, the Parkmore industrial estate and the city centre and,
  - is well served by local facilities access to which is not dependent on private car ownership.
- The proposed development converts serviced land from waste ground to beneficial use in an area of high residential demand.

## 6.2. Planning Authority Response

6.2.1. A submission was received from the planning authority on 14<sup>th</sup> May 2019 in which it is requested that permission be refused. It is confirmed that it is the planning authority's view that:

- the proposed development is overdevelopment,
- that at the site there is no evidence of anti-social behaviour,
- that the site would be suitable for community use such as a community garden of play area,

- That development of the site results in a loss of eight designated car spaces and generates a requirement for a further two spaces.

6.2.2. With regard to the ownership it is accepted that the applicant is the registered owners, since 2018 but claimed that the site area was a designated communal area (part of the community provision) associated with the taking in charge of the development and declared a public road. If permission is to be granted it is requested that a condition be attached with requirements for realignment of the road to the front and removal of kerbing, a grassed area and relocation of a lighting column at the applicant's expense to the satisfaction of the senior roads engineer.

### 6.3. Applicant Response.

6.3.1. A further submission was received from the applicant's agent on 12<sup>th</sup> June 2019 attached to which there are photographs of the site. According to the submission:

- Barriers put in place by the applicant to prevent the parking of a caravan and anti- social behaviour which takes place at the site remain in place.
- The planning authority fails to understand that the CDP carparking standards have altered and that the proposed development is designed to these standards. The high frequency bus route no 409 is within a couple of hundred metres of the site.
- There is a playground facility within two hundred metres which is overlooked whereas the site is not overlooked by the adjoining houses.
- The City Council is unclear about whether the land is private land or land that is communal and declared a public road in 2016 and therefore taken in charge. The applicant is entitled to seek permission to develop the land if permission is granted.
- As the City Council has proposed residential development on public open space and this confirms that prior grants of permission do not preclude changed circumstances to provide for best use of infrastructure and sustainable development.
- The proposed development is fully consistent with CDP standards.



## 7.0 Assessment

7.1. The issues considered central to the determination of a decision and considered below are:

Title

Designation of Site lands.

Parking,

Residential Use.

Residential Amenity

Environmental Impact Assessment

Appropriate Assessment.

### 7.2. Title.

7.2.1. There is no any dispute between the parties as to the ownership of the site lands, it having been established that the applicant acquired and has held Title to the application site lands, since August, 2018.

### 7.3. Designation of site lands

7.3.1. It has been established that designation of the site lands as communal parking space on the plans and subject of the permitted development under P. A. Reg. Ref. 01/368 is also undisputed. Thus, potentially, if developed as originally intended, the site lands could have been 'taken in charge' but in this instance ownership of the site has been transferred to the applicant. The transfer of ownership does not automatically nullify the designation of the lands within the permitted development. However, a case is made in the submissions lodged in connection with the application and the appeal to justify residential development based on current strategic policy addressing the need for residential development in serviced urban areas, close to public transport commensurate with the sustainable development interests and to address negative impacts of the site in its current condition on the area. The argument in the appeal that there is prior precedent within the administrative area the City Council for residential development on designated amenity spaces is also noted. This argument is not fully accepted, in that the reasoning for the poor condition and negative impact of the site on the amenities of

the area at present is related to the failure to implement a communal parking facility to serve the development as indicated for the site on the drawings approved under the original grant of permission. This could have been avoided.

#### **7.4. Parking.**

- 7.4.1. The proposed residential development on the site, as agreed between the parties, reduces the approved total parking supply for the overall Fearann Ri development resulting in the loss of eight communal spaces, less any additional alternative spaces provided within the scheme. The applicant proposes three off site spaces. It is agreed that the total supply and distribution of spaces within the scheme, most of which are communal spaces well exceeds demand. It is therefore considered that the loss of the eight spaces would not have a major negative impact on parking supply to meet demand for parking generated in the area.

#### **7.5. Residential Use.**

- 7.5.1. The residential amenities of the adjoining properties (No 108 and No 94) potentially can be enhanced by insertion of an infill residential development that is of an adequate standard on the site for the row of eight parking spaces approved for the site but never constructed. However, residential use is in material conflict with original grant of permission in which the site area is a communal public space for carparking and associated road surface and intended to be taken in charge. If it is accepted that the carparking is not required, an alternative public amenity use of community benefit would be more acceptable and consistent with the intended purpose of the site lands than speculative residential development. To this end, the views expressed in the report of the Parks Superintendent on the application as to use as a recreational area or play area are supported and use as a passive recreational space is favoured. This option delivers the benefit of retaining the site as communal public space, contributing, as an amenity space to the permeability of Fearann Ri scheme and amenity potential for the residents.
- 7.5.2. The residential amenities of the overall development would also be enhanced by the substitution of a public amenity space suitable for passive recreation and provision for increased pedestrian permeability through the scheme, for the eight approved carparking spaces. The alternative suggestion in the planning officer's report of

provision of a play area, is less favoured, the observation in the appeal as to sufficient existing play facilities in the immediate vicinity being noted.

## **7.6. Residential Amenity.**

- 7.6.1. Setting aside the designation of the site lands for communal parking with an associated road access within Fearann Ri, residential development is consistent with the overall zoning objective and consistent with national strategic policy in relation to increase in housing supply as discussed in the appeal. Even if the designation of the site area as a communal area as provided in the grant of permission under P. A. Reg. Ref. 01/368, it is considered that the current proposal would be substandard overdevelopment and as such injurious to the residential amenities of adjoining properties and those of the future occupants in several respects:
- 7.6.2. Three parking spaces to serve the development at 1.5 spaces per unit are shown as parallel parking on the opposite side of the public road necessitating some works on land outside the control of the applicant and under the control of the City Council. Even with consent of the City Council to such works, the width of the carriageway and footpath at the front of the site would be reduced to a maximum of 2.5 metres which is seriously deficient.
- 7.6.3. The footprint of the two proposed dwellings is set two metres forward of that of No 94 to the east side. In conjunction with the proposed parking spaces on the opposite side the width of the carriageway and footpath, building out to the proposed front building line would result in a sense enclosure to the houses to the east side and would also result in obstruction of sunlight from the west to the roadway at the front of these dwellings and the interior living space lit by the front façade windows.
- 7.6.4. While a setback, or at the minimum, a stepped building line for the two proposed units, adjacent to No 94 would be effective in addressing the concerns as to the limited width of the public road and overshadowing from the west, of No 94 and the houses to the east the quantum and quality of the rear private open space for the dwellings would be diminished. The single storey rear extensions added along with minor increase in depth so that the total internal floor area would exceed the minimum requirement as set out in the Guidelines of seventy square metres are to be used as utility and storage spaces. As a result, there is very limited connectivity between the main internal living space and the rear private open space.

7.6.5. Furthermore, this private open space is enclosed on the north side of the rear boundary by the gable end of the existing three storey duplex/apartment block. Given the foregoing, it is considered that the overall amenity potential for the future occupants is substandard. The proposed development would be seriously injurious to the residential amenities of the future occupants.

#### **7.7. Environmental Impact Assessment Screening.**

Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### **7.8. Appropriate Assessment Screening.**

7.8.1. Having regard to the small-scale nature of the proposed development and, to the serviced suburban location, no Appropriate Assessment issues proposed development would not 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. In conclusion, it is therefore recommended that permission be refused and that the appeal be rejected. Draft Reasons and considerations for a refusal of permission, follow.

### **9.0 Reasons and Considerations**

1. The site comes within an overall residential development for which permission was granted under P. A. Reg. Ref. 1/368 according to which it was designated for communal facilities including the provision of eight shared carparking spaces and associated roadway and, according to which the communal spaces and associated roadways have been taken in charge by Dublin City Council. The proposed residential development on lands so designated would materially contravene the prior grant of permission for the Fearann Ri development.

2. It is considered that the proposed development of two residential units on the site would constitute substandard overdevelopment of the site by reason of the position of the footprint of the proposed dwellings which is almost two metres forward of the front building line of the dwellings to the east side of the site resulting, with the proposed parallel parking in place in reduction in width for both the footpath and public road to 2.5 metres at the front of the dwellings, and in a dwarfing and overshadowing effect of the dwellings to the east side; the lack of connectivity between the main living space in the interior and the private open space to the rear by way of insertion of rear utility and storage extension at the rear and, the sense of enclosure and limited access to sunlight at the rear due of the location of the gable end of the three storey duplex/apartment block on the north side of the rear boundary of the site. . As a result, the proposed development would be seriously injurious to the amenities of the future occupants and to the residential amenities of adjoining properties. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

**Jane |Dennehy**  
**Senior Planning Inspector**  
**3<sup>rd</sup> July, 2019.**