



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304831-19

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<b>Development</b>	Installation of pedestrian gate in the rear boundary wall and construction of access path through communal green space.
<b>Location</b>	131 Baile an Choiste, Headford Road, Galway.
<b>Planning Authority</b>	Galway City Council
<b>Planning Authority Reg. Ref.</b>	19115
<b>Applicant(s)</b>	Alan Garvey
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Alan Garvey
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	26/09/2019
<b>Inspector</b>	Gillian Kane

## 1.0 Site Location and Description

- 1.1.1. The subject site is located within the Baile an Choiste housing estate, off the Headford Road in north-eastern Galway City. The housing estate comprises a mixture of apartments, terraced housing and semi-detached housing.
- 1.1.2. The subject site, no. 131 is a mid-terrace dwelling that backs on to an area of open space. The irregularly shaped space lies to the east of the distributor road running through the site and contains a public lighting pole, an ornamental rock with plaque, an art piece and some trees.

## 2.0 Proposed Development

- 2.1.1. On the 18<sup>th</sup> April 2019, planning permission was sought for the installation of a pedestrian gate in the rear boundary wall of a dwelling and the construction of an access path through the communal green space.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 11<sup>th</sup> June 2019, the Planning Authority issued a notification of their intention to REFUSE permission for the following reason:

- 1 The insertion of a rear pedestrian gate and the construction of an associated pathway across an area of communal open space would result in the fragmentation of a public open space, the proposal would allow for the establishment of piecemeal development of open spaces, which if permitted would seriously injure the amenities of the property in the vicinity and establish a precedent for similar developments and would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

- 3.2.1. **First Planning Report:** Letter of consent submitted from Corporate Services section of Galway City Council. Purpose of proposed development is to provide an access to the rear of this mi-terrace dwelling. Many of the dwellings in the vicinity however not into this particular piece of open space. The space is unsupervised, incidental and its configuration is not particularly useable or functional. Proposed development is acceptable. Grant of permission recommended.

- 3.2.2. **Transport Department:** No objection subject to conditions.
- 3.2.3. **Environment, Recreation & Amenity:** Strongly opposed to an opening onto the green. These lands are solely for public amenity usage and a private access should not be permitted. The access would damage the green and set a precedent. Recommendation to refuse permission.
- 3.2.4. **Second Planning Report:** SEP has consulted with Parks Section. Refusal recommended on the grounds of access to and potential division of the area of open space.

## 4.0 Planning History

- 4.1.1. None of relevance.

## 5.0 Policy Context

### 5.1. Galway City Development Plan 2017 – 2023

- 5.1.1. The subject site is located in an area zoned R Residential, which has the stated objective “to provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods”. Residential use is permitted in principle.

### 5.2. EIA Screening

- 5.2.1. Having regard to nature of the development and the urban location of the site 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

- 6.1.1. A first party appeal against the decision of the Planning Authority to refuse permission has been lodged. the appeal is accompanied by two drawings: one showing a revised location of the proposed path and a second showing the location

of 16 no. rear access gates in the immediate vicinity of the subject site. The grounds of the appeal can be summarised as follows:

- The subject open space has no real function. There is no footpath leading to it. It accommodates a decorative rock and a sculpture. The green is never used and has attracted anti-social behaviour in the past.
- The revised location allows for a shorter path and the main part of the green space to stay intact. This addresses any concerns of fragmentation.
- The proposed gate would not set a precedent as there are many similar gates in the estate.
- The proposed development is appropriate in terms of overall planning and sustainable development. It will not have an adverse impact on the surrounding amenity,
- The planners report noted that the space is not used and recommended a grant of permission.
- The current situation does not fulfil the bin storage requirements of Galway City Council.
- The proposed development is a small intervention which would have a major positive impact.
- The Board is requested to grant permission.

## **6.2. Planning Authority Response**

- 6.2.1. The proposed development was deemed unacceptable based on an SEP assessment and Local Authority reports. This decision reflects the report received from the Parks & Recreation Services who would ultimately be making the decision to permit an encroachment onto public open space. No consent is likely to issue from the relevant section.
- 6.2.2. It is not the function of open space to resolve minor domestic inconveniences which were apparent when the property was purchased. Other gates exist but they open directly onto the street not a valuable pocket park. The proposed development would not improve the functionality of the pocket park. The pocket park has been laid out, invested with good quality finishes, planting and a sculpture. It would be remiss of

the Planning Authority to sacrifice this public amenity for private convenience. The proposed development would detract from this high quality amenity space which is located on a main route, with good passive surveillance from car traffic and footfall.

- 6.2.3. The sculptures were not installed as an anti-social behaviour measure. They are commissioned art-works. Suitable open spaces were chosen to allow them to look best.
- 6.2.4. The Appellants photos demonstrate the visual amenity of the open space. The proposed development would provide a precedent to the other properties abutting this space. The Board is requested to refuse permission.
- 6.2.5. The response is accompanied by a copy of the letter from Corporate Services consenting to the making of the application and details of the art pieces.

## **7.0 Assessment**

- 7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the single issue is the principle of the proposed development.

### **7.2. Principle of the Proposed Development**

- 7.2.1. The need and desire to access the rear of a mid-terrace dwelling is understood and reasonable. Particularly where an obvious solution exists. Desire lines will always be created across open space. The proposed development is merely an attempt to formalise that desire line.
- 7.2.2. I accept the reasoning of the Parks department that such spaces are public amenity and cannot be co-opted for private use. However, the intention of open space is that it is used, actively and passively. The subject open space, whilst providing a pleasant visual break in this housing estate provides no meaningful recreation use. Nor is it actively overlooked. The proposed development will provide an additional function for the space. The small scale of the open space and the number of dwellings backing on to this space are such that the precedent created by such a permission would not be significant. The active use of the space by residents would

encourage lower speeds on the adjoining distributor road and encourage the use of the area as a shared space.

- 7.2.3. The need of the appellants to gain access to and from the rear of their property can occur without the installation of a path across public open space however. Access to the road can still be attained without the permanent installation of a path. It is not uncommon for paths to be evolve organically across grass. I accept and I agree with the reasoning of the Planning Authority that the space has been planned to be visually pleasing and the construction of a path across the space would detract from the space.
- 7.2.4. Should the Board decide to grant permission, a condition should be added which omits the proposed pathway across the public open space. This allows the residents to access the rear of their property and overcomes the objection of the Parks department to the creation of a path across public open space. Further, as noted by all parties, there are multiple examples of gates in rear boundary walls.

## **8.0 Recommendation**

- 8.1. That permission be granted in accordance with the following reasons and considerations and subject to the following conditions:

## **9.0 Reasons and Considerations**

- 9.1.1. Having regard to the zoning objective of the area, the design, layout and scale of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the development would not seriously injure the visual amenities of the open space or residential amenity of property in the vicinity. The proposed development for which permission is sought 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, as amended by the further plans and particulars received by An Bord Pleanála on the 4th day of July, 2019 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 Prior to the commencement of development, the applicant shall submit for the written approval of the Planning Authority revised drawings showing the omission of the proposed pedestrian path across the public open space.

**Reason:** In the interest of clarity.

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Gillian Kane  
Senior Planning Inspector

27 September 2019