



An
Bord
Pleanála

Inspector's Report ABP-305506-19

Development	6 houses
Location	Ard Aoibhinn, Laherfineen, Innishannon, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	19/5762
Applicant(s)	Dunboy Construction and Property Developers Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Dunboy Construction and Property Developers Ltd.
Observer(s)	Brendan Dempster Federico Gilli Thomas Davis Donal Linehan Hobleton Ltd.

Date of Site Inspection

12th December, 2019

Inspector

Kevin Moore

1.0 Site Location and Description

- 1.1. The rectangular shaped site is located on the east side of the Ard Aoibhinn housing estate to the north of Innishannon village centre in County Cork. The site slopes in a west-east direction down to the adjoining local road and there is a gated entrance onto this road along the eastern site boundary. The roadside boundary otherwise comprises a stone and earthen bank with mature trees. The site is being used for storage purposes associated with the estate construction. It is bounded to the north and south by single dwellings with frontage onto the public road. Church Hill, which is a small development of detached houses, and one-off dwellings are on the opposite side of the road facing onto the site.
- 1.2. The existing estate comprises a mix of terraced, semi-detached and detached two storey dwellings. 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

- 2.1. The proposed development would comprise the construction of six houses consisting of 4 no. semi-detached, four bedroom units and 2 no. three bedroom semi-detached units. The proposed development would connect to the existing temporary waste water treatment plant serving the estate of Ard Aoibhinn. The proposal would replace the provision of house no. 39 and public open space previously permitted under Planning Permission 99/5878.
- 2.2. Details submitted with the application included a Planning Report, an Urban Design Statement, correspondence from Irish Water, and correspondence in relation to the capacity of the existing waste water treatment unit.

3.0 Planning Authority Decision

3.1. Decision

On 4th September 2019, Cork County Council decided to refuse permission for the proposed development for one reason relating to encroachment on designated public open space.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner submitted that the application is effectively for permission to build on permitted open space. The previous decisions of the planning authority and the Board were noted. The changes from the previous proposal set out by the applicant were acknowledged. It was noted that there had been no material change in development plan policies. The problem of overlooking was seen to be resolved. It was concluded that the loss of open space would have a material and adverse impact on the residential amenities of the estate and a refusal of permission was recommended.

The Senior Executive Planner concurred with the conclusions of the Planner.

3.2.2. Other Technical Reports

The Public Lighting Section requested further information on lighting provisions.

The Estates Engineer was inclined to recommend a refusal of permission given the site's planning history. A schedule of further information was set out in the event further consideration was to be given to the proposal.

The Liaison Officer stated "No comment".

The Area Engineer requested further information relating to access to the public road network, the setback of the boundary to the rear of the proposed houses by at least 2 metres to facilitate the construction of a footpath, and the location and provision of road gullies.

3.3. Prescribed Bodies

Inland Fisheries Ireland requested that planning conditions require that the proposed development will not be occupied until such time as the public sewerage facilities are upgraded and fully commissioned or an alternative method of effluent disposal has been put in place.

Irish Water had no objection to the proposed development.

3.4. **Third Party Observations**

Third party submissions were received from Federico Gilli, Thomas Davis, Brendan Dempster, Marian Browne, Hobleton Ltd., Aidan and Mairead O'Connor, Donal Linehan, and DJ and Clare Jennings. The observations set out the principal planning concerns raised.

The applicant submitted responses to a number of the third party submissions on 23rd August 2019.

4.0 **Planning History**

I note the extensive planning history relating to the Ard Aoibhinn estate. This included P.A. Refs. 99/5878, 07/10356, and 14/4845.

The most recent history related to the appeal site as follows:

ABP-303215-18 (P.A. Ref. 18/6518)

Permission was refused by the Board in 2019 for the construction of 6 houses for one reason relating to the encroachment on designated public open space and the adverse impact on residential and visual amenities.

5.0 **Policy Context**

5.1 **Bandon Kinsale Municipal District Local Area Plan**

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

Objectives include:

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

5.2 **Appropriate Assessment**

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be

likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

It is acknowledged that the site is over 10 km to the north of Courtmacsherry Bay SAC and SPA.

5.3 EIA Screening

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment that would warrant environmental impact assessment. No EIAR is required.

6.0 The Appeal

6.1 Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

- There have been a number of changes to the application from that of 18/6518, namely leave to appeal has been granted to challenge the previous Board refusal, the applicant has consented to an area of land behind houses 44-47 to be allocated for use as public open space, windows deemed to overlook an adjoining house have been removed, and the finished floor level of the southernmost houses has been raised 0.5m.
- The original site area of Ard Aoibhinn was 3.377 ha and the total area of open space was 23.84% of the site area. The current proposal will reduce the open space provision to 16.8%. This is on the higher end of requirements for open space as set out in the Cork County Development Plan and is not a rational basis for the refusal of permission.
- The functionality of the previously permitted open space does not seem to have been considered, with an 8m level difference across a 50m width. It would be practically unusable.
- It has not been demonstrated how the change of open space would have a material and adverse impact on the residential amenities of the estate.

- There is a line of trees along the southern boundary and all potential overlooking to the south is eliminated. There will be no overlooking of houses on the opposite side of the road because of a combination of existing and proposed planting.
- The additional open space that is being offered will more than compensate for the loss of the steeply sloping permitted open space where the proposed houses would be located and therefore the overall development would not materially contravene the terms and conditions of the permitted development when considered as a whole.
- The planning authority has failed to demonstrate the materiality of the alleged contravention of the terms and conditions of the parent permission.
- The part of the overall estate that has been completed has never had the use of the open space area the subject of the previous refusal and the houses have used the substantial and level public open space that is located in the centre of the estate without any significant loss of amenity.
- The applicant has no intention of building any more houses on the open space area. A planning authority cannot refuse permission for something that it thinks an applicant may do in the future. The proposal will not set a precedent for any further development within the site.

In conclusion, it is submitted that the application is fundamentally different to the previous application with respect to public open space and must be assessed entirely new. The Board is asked to issue a grant of permission.

The appeal included the applicant's Planning Report submitted to the planning authority

6.2 Planning Authority Response

The planning authority submitted that it had no further comments to add other than those outlined in the Planner's report.

6.3 Observations

The observation from Brendan Dempster, who resides on the opposite side of the public road, raised concerns relating to the proposal being similar to the previously

refused proposal, a gross over-development of the site, overshadowing of his property and loss of privacy, inadequate provision of private open space, the inadequacy of the treatment plant serving the estate, the proposed houses turning their backs on the public road, the removal of trees, the impact on the Bandon River, and the failure to provide a games area and neighbourhood play area in accordance with Condition 73 of the parent permission.

The observation from Federico Gilli, who resides on the opposite side of the public road, raised concerns relating to the layout and design of the proposal, the removal of green area, the elevated nature of the proposed houses, and the potential for slippage.

The observation from Thomas Davis, who resides to the north of the site, raised concerns relating to the elevated position of the proposed development, the development being out of character, the overbearing impact on existing houses, the road safety hazard, the lack of tree planting in accordance with the requirements of the parent permission, the adequacy of the retaining structure along the northern boundary, inadequacy of open spaces within the estate, and the non-compliance with the parent permission in relation to open space provision.

The observation from Donal Linehan raised concerns relating to the elevated nature of the development, the design and orientation of the houses, the removal of trees, the loss of open space, and safety concerns relating to risks from objects from gardens posing a risk to passing traffic, a lack of a footpath along the road, and the reduction of light to the road.

The observation from Hobleton Ltd. raised concerns relating to the similarity of the proposal to the previously refused proposal, the inappropriateness of the applicant's proposed land swap for open space provision, the substantial nature and continual non-compliance with planning permissions on the site, and the layout, design and elevated position of the proposed houses.

7.0 Assessment

7.1 Introduction

7.1.1 I note the recent previous Board decision under ABP-303215-18 relating to this site. I further note the similarities of the proposed development with that previous proposal in terms of the siting, building form, layout and character of the proposed houses. It is reasonable to ascertain that the current house design proposals reflect those for which permission were previously sought. I acknowledge that the Board refused permission for the previous proposal for one reason that related to the material contravention of the terms and conditions of the parent permission for this site, i.e. P.A. Ref. 99/5878, because that proposed development encroached on lands that have been designated as public open space serving the overall estate. It was also considered that this would set an undesirable precedent for similar type developments in the estate and that, because of its elevated nature and proximity to a 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 on the visual amenities of the area.

7.1.2 It is evident from the above that the Board's decision related to concerns associated with the impact on designated open space, the precedent this would set within the estate, the adverse impact on the amenity of a neighbouring property, and the impact on the visual amenities of the area due to the development's elevated position, its layout and design. It can reasonably be determined that the Board's previous decision did not focus solely on the loss of open space and the impact of the development on the neighbouring house to the south. Furthermore, it is reasonable to determine that the Board did not have particular concerns about the impact of the development on the amenities of other residential properties other than that referenced, the suitability of the waste water treatment unit to accommodate the additional waste water loadings, land slippage, the overdevelopment of the site, the impact on the Bandon River, non-compliance with conditions in other planning permissions, etc. For this reason, I consider that it is appropriate to focus on the issues raised in the Board's previous decision and in the appeal given the similarities between the previous and current proposals and to determine that the other issues were not seen to merit reference in any reasons for refusal.

7.2 Open Space Provision and Impact on Amenity

- 7.2.1 It is apparent that it is accepted by all parties to the appeal that the proposed development would be sited on lands designated as open space in the parent permission for the overall development of the Ard Aoibhinn estate. When considering the open space provision within the estate it is clear that there is one large functional open space in the centre of the estate which abuts Houses 31 to 33. The remaining spaces are strips of green area alongside road edges and are of amenity value but do not constitute space that could be used as play areas or areas of recreational value. The site of the proposed development was clearly intended as the other large open space within the estate, whether this be for amenity or recreational use or both.
- 7.2.2 The loss of this land area is evidently a significant loss of public open space for the residents of this estate. To suggest that the non-development of this open space would not be missed within the overall scheme would be erroneous as, whether for recreational or amenity purposes, it would add to the amenities of the residents living in the estate. It is also reasonable, in my opinion, to determine that, with the development of this estate, the new residents would have an expectation that the lands proposed for the six houses would be developed for one house and for open space as originally intended. The applicant may reasonably argue that the open space provision within the overall estate meets with the requirements of Cork County Development Plan. However, the original intent was that there would be one additional house on this land and there would be another substantial open space to serve the estate's open space needs.
- 7.2.3 The functionality of this open space has been alluded to in terms of the recreational and amenity value for the residents of the estate. In addition to this, one must appreciate the relationship of the new estate with the public road and the public realm. In this context, the open space that would be provided at this location, in my opinion, would play an integral part in the overall presentation of the new estate to this area and its integration. It would provide a buffer between housing and the public road, it would likely retain and enhance hedgerows, and, visually, it would present as an amenity space to the wider area. Clearly, such a provision of open space at this location in place of the development of housing avoids the presentation and exposure of private amenity spaces to the rear of houses and the rear elevations of such houses themselves close to the public road. In my opinion, the provision of

open space at this location, having regard to the overall layout of the other housing within the estate, the sloping terrain of the lands at this location, the proximity to the public road, and the avoidance of the likely visibility of new housing at this location backing onto the public road, would appear to have been a rational and orderly choice for this part of the estate site.

7.2.4 For the above reasons, I see the loss of public open space to indeed have significant adverse consequences for the residents of this estate and the wider area. Its development for housing would prove a substantial loss of space of amenity and recreational value. The consequences for the amenity of the wider area, by the intrusive nature of the form, location, layout and siting of the new houses on elevated lands, would be adverse in terms of the visual presentation to the public road. In my opinion, the parent permission appears to have sought to address such adverse impacts from the outset, making an appropriate choice for the use of the land and adding to the amenity value of the overall estate.

7.2.5 I note that the appellant makes reference to the option of providing open space as a replacement for the loss of such space by providing alternative space to the rear of existing houses 44 to 47. In my opinion, this is completely unacceptable, being sited immediately to the rear of these houses without any planned provision for such space and beyond any consideration of the occupants of the existing houses. Furthermore, this proposed provision is the type of location that should be avoided in any sustainable plan for a residential estate, being backland that is not overlooked and is secluded. It would be a most undesirable location to develop open space and would likely fail as a usable space for children.

7.2.6 Overall, it is reasonable to determine that the loss of open space by the development of houses on this land constitutes an adverse impact for the residents of the Ard Aoibhinn estate. Furthermore, the development of housing would result in a very poor presentation of houses to the public road that would be visually intrusive and clearly not in the interests of protecting the amenities of the wider area. The estate development would be best served by the provision of the open space buffer on these lands that would protect the amenities of the area while adding an important amenity space to the overall estate development.

7.3 Precedent

7.3.1 In my opinion, the issue that permitting the proposed development would set an undesirable precedent for similar type developments in the residential estate of Ard Aoibhinn is not a significant planning issue. Any new proposal for additional housing within this estate would be subject to a requirement to acquire planning permission and the merits of such a proposal would accordingly be assessed, having regard to the proper planning and sustainable development of the estate and the wider area.

7.4 Impact on the Dwelling to the South and the Visual Amenities of the Area

7.4.1 I note that the Board's previous reason for refusal determined that the proposed development would be overbearing on the existing dwelling to the south of the site due to its elevated position above the local road and due to the layout and the design of the houses. It is very clear that the Board did not raise concerns about impact on the house to the south by way of overlooking, overshadowing or loss of privacy. Notwithstanding this, I note that the appellant has placed a degree of emphasis on the omission of windows in the new proposal and the existence of an established treeline and hedgerow on the flanking boundary. It is also notable that the planning authority, in considering the issue of the impact on the dwelling to the south, focused on the issue of overlooking and determined that issue had been addressed.

7.4.2 The material circumstances relating to this site have not changed since the Board's previous decision in terms of boundaries, existing neighbouring property, etc. Indeed, it is particularly notable that the nearest proposed house to the existing house to the south would have a finished floor level that would be 0.5m higher than that sought in the previously refused proposal. If the Board determined that the previous proposal would be overbearing on the existing house, I cannot now reasonably come to an alternative conclusion where the finished floor level of the nearest proposed house is more elevated and where material circumstances have not otherwise changed.

7.4.3 Having regard to my considerations set out earlier in relation to amenity, I am satisfied to conclude that the development of houses at this location, very close to the public road and presenting as elevated properties where the rear elevations and private amenity spaces (with very shallow back garden depths for a number of these

houses) abut the public road, would have an overbearing impact and this impact would extend to a prominence over the existing house to the south. It must be clearly understood that the proposed houses are intended to be developed with finished floor levels that would be approximately 4-5 metres over the level of the public road, with rear elevations of the new houses set back between approximately only 9 and 13 metres from the public road edge. These houses would be close to a public road where there is an incline and the houses would be to a height of 9.8 metres over finished floor levels. These houses unquestionably would be prominent in such a context. For these reasons I consider that the Board's previous reason relating to this impact is merited.

8.0 Recommendation

8.1 I recommend that permission is refused for the following reason and considerations.

9.0 Reasons and Considerations

1. The site of the proposed development comprises an area of designated public open space in accordance with Planning Permission P.A. Ref. 99/5878 and which forms part of the development of the residential estate of Ard Aoibhinn. It is considered that the proposed development, resulting in a significant reduction in the usable public open space serving the estate, would be contrary to Planning Permission 99/5878 which governs the development of the estate and which requires the site area to be developed and maintained as public open space, would result in a substantial reduction in the amenities for the residents of the estate, and would seriously injure the residential and visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the elevated nature of the site, the layout, scale and orientation of the proposed houses, the proposed finished floor levels, the building height, and proximity of the proposed houses to the public road and neighbouring dwelling to the south, it is considered that the proposed development would constitute prominent and visually obtrusive development

and would, thereby, seriously injure the visual amenities of the area and have an overbearing impact on the dwelling to the south. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Kevin Moore
Senior Planning Inspector

3rd February 2020