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Bord  
Pleanála

## Inspector's Report ABP 306654-20

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<b>Development</b>	Change of use of portion of lands from public open space to private open space further to planning permission ref. 18589/93.
<b>Location</b>	No.1 Ardnalee, Middle Glanmire Road, Cork.
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	19/38877
<b>Applicants</b>	Garin Murphy & Lyn Kenny
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	1 <sup>st</sup> Party v. Refusal
<b>Appellants</b>	Garin Murphy & Lyn Kenny
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	27/04/20
<b>Inspector</b>	Pauline Fitzpatrick

## **1.0 Site Location and Description**

The site, which has a stated area of 0.0650 hectares, is located to the west of the entrance to the Ardnalee housing estate to the north of, and accessed from Middle Glanmire Road in Montenotte in north Cork City. It slopes steeply down from north to south. The mature estate is characterised by 2 storey detached dwellings of varying designs.

A c. 2 metre high masonry wall delineates the roadside boundaries to the south and east which is comparable to that along the eastern side of the estate access road. The site is currently laid out as a garden area associated with No.1 Ardnalee to the north-west. A driveway serving both No.1 and a dwelling with frontage onto Middle Glanmire Road delineates the western boundary.

## **2.0 Proposed Development**

Permission is sought for change of use of a portion of the lands in the applicants' ownership from public open space to private open space on foot of permission reference 18589/93.

The purpose of the application is to provide clarity in that the lands form part of their private garden area and were enclosed by way of a boundary wall which was granted permission under ref. 18589/93 and constructed in 1994. The site is not open to the public and does not provide for public amenity space.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse permission on the grounds that the proposal would materially conflict with objective 11.7 of the City Development Plan which states that there will be a presumption against development on all open space in residential estates.

## 3.2. **Planning Authority Reports**

### 3.2.1. Planning Reports

The Senior Executive Planner notes that the site formed part of the overall original estate setting out/open space. The Senior Planner has advised of Objective 11.7(b) of the City Development Plan. A refusal of permission is recommended. The Senior Planner endorses the recommendation.

### 3.2.2. Other Technical Reports

Roads Design (Planning) Report has no objection subject to a condition.

Parks Report considers that in order to protect the visual amenity at the entrance to Ardnalee Estate it is recommended that the area should remain as public open space. Refusal of permission recommended.

## 3.3. **Prescribed Bodies**

Health and Safety Authority has no comment.

## 3.4. **Third Party Observations**

None

## 4.0 **Planning History**

18589/93 – permission granted in 1994 to erect a 2 metre high boundary wall incorporating portion of public open space along Ardnalee Road and adjoining No.1 Ardnalee.

Condition 2: the 2 metre high wall to be reduced in height to 300mm with a 2 metre high decorative railing to be erected on same. Reason: In the interests of the visual amenities of the area.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

Cork City Development Plan 2015

The site is within an area zoned Z04-Residential, Local Services and Institutional Uses. The objective of the zoning is to protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3.

Objective 11.7 Public Open Space: -

- a. To protect, retain, improve and provide for areas of public open space for recreation and amenity purposes. There will be a presumption against development of land zoned public open space for alternative purposes;
- b. There will be a presumption against development on all open space in residential estates in the city, including any green area/public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation/ amenity open space, and also including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes;

## 5.2. **Natural Heritage Designations**

None in the vicinity.

## 6.0 **The Appeal**

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

The submission by Coughlan & DeKeyser Architects, which is accompanied by a Solicitor's letter on behalf of the 1<sup>st</sup> party appellants against the planning authority notification of decision to refuse permission, can be summarised as follows:

- The applicants are the owners of the site and it forms part of their garden.
- The lands in question were enclosed by a boundary wall in 1994 by the dwelling's owners for which permission was secured under ref. 93/18589.
- The application for the development now subject of this appeal was made to seek clarity.

- The site is not a public amenity area and has been enclosed for a significant period of time.
- The file 93/18589 has been mislaid and in its absence the planning authority is not willing to give the applicants any guidance on their development proposals for this portion of the lands.

## 6.2. **Planning Authority Response**

None

## 6.3. **Observations**

None

## 7.0 **Assessment**

I submit that the substantive issue arising in the case centres on whether the site in question comprises public open space.

The site, which slopes steeply from north to south, is to the west of the entrance to the Ardnalee housing estate from Middle Glanmire Road. From my inspection I submit that the site reads as, and forms part of the private garden area of No.1 Ardnalee to the north east. It is laid out as a lawn with mature planting noted throughout. The roadside boundaries are delineated by a masonry wall approx. 2 metres in height which matches that on the other side of the estate access road. It reduces in height in front of the dwelling. As a consequence of same the site is not visible from the public realm save from the opposite side of Middle Glanmire Road to the south. There is no access to the site except through No.1 Ardnalee, itself, and via the gated entrance to the property from Middle Glanmire Road. On this basis I do not consider that the site can be viewed as public open space.

As can be extrapolated from the maps for the area, its relationship to the open space immediately to the north-east and the steep falls from north to south, it is reasonable to conclude that the site may originally have been identified as open space when the estate was being designed and developed. However, on the basis of the information available on file permission was secured by the previous owners of No. 1

Ardnalee for a wall to effectively enclose the space under ref. 93/18589. The wall is stated to have been constructed in 1994. Whilst that as constructed does not appear to comply with a condition attached to the permission which required the boundary to be delineated by a 400mm wall topped with a railing the end result remains the same namely, the incorporation of what may have been a public open space into a private open space serving a dwelling. On this basis it is my understanding that the current application is effectively seeking clarity on what has essentially been permitted in 1994.

The provisions of objective 11.7 of the current City Development Plan which pertain to public open space are reasonable and seek to protect and retain areas of public open space with a presumption against development on all open space in residential estates in the city, including any green area/public amenity area that formed part of an executed planning permission for development. However, I do not consider that the retrospective application of the objective to a site which has not functioned or been identified as a public open space for a considerable period of time to be reasonable. It is also noteworthy that the maps accompanying the City Development Plan see fit, in many instances, to differentiate between open spaces within housing estates and has applied a public open space zoning to some and not to others. As per Map 3 this is not the case for the subject site. The shadings on the relevant ordnance survey map for the area appear to reflect this differentiation.

In view of the foregoing and on balance I consider that the space in question by reason of a previous permission does not and has not functioned as open space for a considerable period of time and that the application of objective 11.7 is misplaced in this instance. On this basis I do not consider that the proposed development contravenes materially the said development plan objective or any other objective of the current City Development Plan.

Should the Board consider that the provisions of section 37(2)(b) of the Planning and Development Act, 2000, as amended, apply in this instance I submit that section 37(2)(b)(ii) is applicable in that the objectives of the development plan are not clearly stated, insofar as the proposed development is concerned.

In the interests of clarity, a grant of permission in this instance cannot be construed as implying that the site has potential for development.

## **8.0 Recommendation**

Grant permission for the above described development for the following reasons and considerations.

## **9.0 Reasons and Considerations**

Having regard to the existing pattern of development in the vicinity, the nature and extent of the site which forms part of the private open space serving No.1 Ardnalee and to the planning history for the site, it is considered that the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would not contravene materially objective 11.7 of the current Cork City Development Plan which seeks to protect and retain areas of public open space. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**May, 2020**