



An
Bord
Pleanála

Inspector's Report

ABP-307038-20

Development	Erection of two internal boundary fences to the east and west of the resident's communal and private open space to the rear of Block 2.
Location	Riverwalk Court, Ratoath, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	RA200045
Applicant(s)	Riverwalk Management Company Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	Third Party v's Refusal.
Appellant(s)	Geraldine Smith
Observer(s)	Denis Finn.
Date of Site Inspection	14 th of July 2020.
Inspector	Stephanie Farrington

1.0 Site Location and Description

- 1.1. The appeal site is located within an existing mixed use development at Riverwalk Court, Ratoath, Co. Meath. The site extends to include the existing apartment and commercial development, associated public open space and car parking.
- 1.2. Vehicular access to the existing residential blocks at Riverwalk Court is provided via Somerville Road. Access to the existing Tesco Express and restaurant units in Block 1 of the complex is provided via Fairyhouse Road. The Broadmeadow River is located to the north of the site.
- 1.3. The appeal relates to an existing area of open space to the north of apartment Block 2 and to the south of the Broadmeadow River. An existing stone wall and fence boundary is provided adjacent to the river. A footpath runs along the perimeter of the northern boundary of Block 2 and connects to the commercial units to the east and the existing car parking area to the west. Unrestricted access is currently provided to this area.

2.0 Proposed Development

- 2.1. The proposed development, as described in the public notices, comprises the erection of two internal boundary fences to the east and west of the resident's communal and private open space to the rear of Block 2. The development description outlines that these boundary treatments and private open space screenings formed part of Master Plan 01/851 and DA20413 at Riverwalk Court, Ratoath, Co. Meath.
- 2.2. Drawing no P-02 illustrates that the proposed western gate is 2.4 m high, 9.02m wide and incorporates an entrance gate. The proposed eastern fence is 2.4m high and 7.952m wide. The proposed material for both fences is galvanised steel which is similar to the current fence provided adjacent to the River Broadmeadow.

3.0 Planning Authority Decision

3.1. Decision

Meath County Council issued a decision to refuse planning permission for the proposed development in accordance with the following reasons and considerations:

1. The proposed development conflicts with the terms of condition no. 7 of planning reg. ref. no. 01/851 which states that “*A 10m wide access strip shall be maintained adjacent to the Broadmeadow River. This strip shall be designed and maintained so as to accommodate mechanical plant access to the River*”. The proposed development, if permitted, would contravene materially this condition and is therefore considered to be contrary to the proper planning and sustainable development of the area.
2. The proposed development, if permitted, would result in the loss of an area of public open space which is designated under planning reg. ref. no. 01/851 for the use of all residents within the apartment development. The proposed development, if permitted, would not therefore be in accordance with the proper planning and sustainable development of the area.
3. The subject site is zoned FI Open Space in the Ratoath Local Area Plan 2009 to 2015. The relevant zoning objective is “*to provide for and improve open spaces for active and passive recreational amenities*”. It is considered that the proposed development would materially contravene said zoning objective as it restricts access to this area and is therefore contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner’s report reflects the decision of the planning authority. The following provides a summary of the points raised.

- The area to which the application relates is shown as public open space on the submitted site layout plan. The proposed development as presented is considered to be in conflict with condition no. 1 of PA Ref 01/851.

- The proposal relates to an area designated for open space within PA Ref: RA01/851. The development would result in the loss of an area of designated public open space which should remain fully accessible at all times for all the residents of the development.
- The site is located within an identified flood risk zone- Zone B and partially Flood Zone A. While the construction of a fence is not a vulnerable form of development the proposal would impede access to the Broadmeadow River in the case of a flood event. The proposed development, therefore, in terms of flood risk is not considered to be in accordance with the proper planning and sustainable development of the area.
- The site is not within or adjacent to any Natura 2000 site. There does not appear to be any Natura Site within 15km of the proposed site.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

3 no. submissions were received on the application. Issues raised within the observations include the following:

- Support for the proposed development.
- Area is subject to anti-social behaviour.
- Boundary fences are required to protect properties and well being of ground floor residents of Block 2.
- Proposed fence would give security and privacy.

4.0 Planning History

The following planning history relates to the appeal site.

PA Ref: RA 01851: Planning permission granted by Meath County Council in March 2002 for demolition of bungalow & erection of 4 no. ground floor retail units and 26 no. apartments in 3 blocks, (2 storeys over retail units & 3 storeys over ground), & 3 storey office building of 227 sq.m., including site works, landscaping & car parking for 38 no. cars with vehicular access via new proposed roundabout on Fairyhouse Road, with temporary access via the existing site entrance onto Fairyhouse Road all on a site of area c. 0.92 acres.

The decision of the Council was subject to 35 no. conditions. Conditions relevant to the subject appeal include the following:

- Condition no. 7: 10m wide access strip shall be maintained adjacent to the Broadmeadow River. This strip shall be designed and maintained so as to accommodate mechanical plant access to the Broadmeadow River.
- Condition no. 19: details of boundary treatment shall be submitted for written agreement with the planning authority prior to the commencement of development.

The decision of Meath County Council to grant permission for the development was subject to third party appeal to An Bord Pleanála (PL17.129398). The grounds of appeal related to non-compliance of the proposed residential development with the open space zoning objectives pertaining to part of the site. The appeal was subsequently withdrawn.

PA Ref DA20413: Planning permission granted by Meath County Council in July 2003 for retention of substructure and superstructure of retail unit, and completion of revised proposals, including revised site boundaries, for development (approved under Reg. Ref. 01/851).

No revisions to the open space area are evident from the approved drawings. The permission was subject to 12 no. conditions.

Condition no. 1 of the permission outlined that the conditions of P01/851 shall be fully complied with.

Adjoining Site to the West

PA Ref P01/673 planning permission granted for development comprising 150 dwellings, vehicular access via new proposed roundabout on Fairyhouse Road with temporary access via existing site entrance, site development & landscape works including the provision of an approx. 4.24 hectare landscaped public park including the provision of two all weather tennis courts, scout den, active age day centre, creche, an exercise track / fitness trail, childrens play area & ancillary amenity facilities, all on a site of approx. 9.61 hectares bounded by Fairyhouse Road to the east & Clonkeen Estate to the south.

Enforcement History:

UD/19/209: Warning Letter issued in respect of unauthorised fencing.

5.0 Policy Context

Development Plan

5.1. Ratoath Local Area Plan 2009-2015

- 5.1.1. The appeal site is located within the administrative boundary of Meath County Council. The Ratoath Local Area Plan 2009-2015 is the relevant LAP for the area.
- 5.1.2. The appeal site is subject to the following zoning objectives:
- A1 existing residential with an objective “to protect and enhance the amenity of developed residential communities”
 - FI Open Space with an objective “*to provide for and improve open spaces for active and passive recreational amenities*”.
- 5.1.3. The proposed fences are located on the portion of the site which is zoned for Open Space purposes. The following uses are listed as permissible and open for consideration on lands zoned for open space purposes:

Permitted Uses

- Car Park for Recreational Purposes, Craft Centre / Craft Shop, Community Facility / Centre, Cultural Facility, Cycleways / Greenways / Trail

Development, Leisure / Recreation / Sports Facilities, Playing Pitches, Water Services / Public Services.

Open for Consideration Uses

- Allotments, Bring Banks, Childcare Facility, Place of Public Worship.

5.1.4. The zoning map highlights that the site is located within an Area of Archaeological Interest and an area designated within an interface with Flood Risk zones A and B.

5.1.5. Section 6.6 of the Local Area Plan relates to Open Space within the Plan Area. This outlines that:

“Ratoath benefits from the presence of the River Broadmeadow which has the potential to act as an attractive amenity feature in the centre of the town. There is an existing walkway alongside part of the river. The objectives of this Local Area Plan will seek to protect this walkway and further enhance its quality”.

Private open space acts as recreational and living space for children and pets respectively as well as providing a safe, enclosed area for the resident’s personal enjoyment and relaxation.

5.1.6. The following policies and objectives for Open Space are set out within the LAP:

- *SOC POL 15 To ensure that high quality open space is provided to serve the active and passive recreational needs of the population of Ratoath.*
- *SOC OBJ 15 To investigate the provision of riverside and pedestrian walkways in Ratoath.*
- *SOC OBJ 17 To provide and encourage further improvements along the banks of the River Broadmeadow.*
- *SOC OBJ 18 To develop a system of linear parks and waterfront amenity areas with walkways and cycleways, subject to the availability of resources, along the banks of the River Broadmeadow.*

5.1.7. The development management standards and guidelines applicable to the LAP area are those set out in the Meath County Development Plan 2013-2019.

5.2. Meath County Development Plan 2013-2019

5.2.1. Section 11.2 relates to development management guidelines and standards for residential development.

5.2.2. Residential Design Criteria:

- Public open space within residential developments should be designed so as to complement the residential layout and be informally supervised by residents. They should be visually and functionally accessible to the maximum number of dwellings.

5.2.3. Public Rights of Way are identified within Appendix 14 of the Meath County Development Plan. The following right of way is identified in Ratoath:

R7 - Along the south bank of the Broadmeadow River in Ratoath, from a point 53 metres east of the junction of Regional Road R155 and Local Road L-50200- 48 for a length of 470 metres to the “James Corbellis” Bridge and via the pedestrian bridge over the Broadmeadow River to Regional Road R125 at the Catholic Church in Ratoath, for a length of 243 metres.

5.2.4. The extent of this right of way is identified within Map 9.4.24 of the Meath County Development Plan. It relates to lands to the south of the Broadmeadow River to the east of the R155 Fairyhouse Road and does not extend to include the appeal site.

5.3. Sustainable Urban Housing- Design Standards for New Apartments

5.3.1. Section 4.10 of the Guidelines relates to the provision of Communal Amenity Space. The following is stated in this regard:

“The provision and proper future maintenance of well-designed communal amenity space will contribute to meeting the amenity needs of residents. While private and communal amenity space may adjoin each other, there should generally be a clear distinction with an appropriate boundary treatment and/or a ‘privacy strip’ between the two”.

5.4. Natural Heritage Designations

The appeal site is not within or directly adjoining any Natura 2000 site. There are no Natura 2000 sites within 15km of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

A third-party appeal has been submitted by Geraldine Smith. The following provides a summary of the grounds of appeal.

- The masterplan for Riverwalk Court was a mixed-use development consisting of 3 no. 3 storey blocks and 4 commercial units.
- Refers to unfinished areas within the development including screening for communal and private open space, approved bin/bicycle store not provided, designated parking demarcation, drainage and paving issues.
- The approved plans included sections of screened off private open space for the 10 ground floor two bed units in the development at Blocks 2 and 3. This screening was not provided nor was internal access from the 10 no. 2 bed ground floor units to their private open space.
- The application seeks to provide screening for private open space for Block 2 and 3 and to secure this small area of private open space and communal open space for the apartment owners.
- The developer who owned the retail units created a public walkway through this area which acts as a shortcut for the public accessing the retail units and as a school drop off and collection point. Public access to the retail units is provided via Fairyhouse Road and there is no requirement for the public to use this route.
- The area is subject to regular anti-social behaviour impacting on the residential amenity of residents.
- The rationale for the proposed fencing is to prevent footfall by the public and to ensure that the owners of the ground floor apartments and all the residents of the complex can enjoy their public open space.
- In response to the first reason for refusal it is stated that the OPW will continue to have access to maintain the banks of the Broadmeadow River

which runs to the north of the development. The grassed area is owned and maintained by the Riverwalk Residents Management Company.

- Access arrangements to the River have been agreed with the OPW including a 3m wide gate to be installed in the fencing to allow vehicular access to the area if and when required. Access to the River is also provided to the east and west of residents open space. Correspondence from the OPW is attached in this regard.
- In response to the second reason for refusal it is stated that the area is used as a public walkway and the application seeks to provide use of the open space for all residents in the apartment development and the provision of screening for private open space for the residents of the ground floor apartments.
- The application seeks to protect the much-reduced area of communal open space behind Block 2. The area is not available to apartment owners free of regular anti-social intrusions and public use.

6.2. Planning Authority Response

6.2.1. Meath County Council's response to the grounds of appeal can be summarised as follows:

- Planning authority is satisfied that the majority of issues raised within the appeal were considered in the planning officers report.
- The subject area is identified as public open space within the parent permission PA Ref 01/851. There is no direct access from the ground floor units of Block 2 to this area of public open space.
- Refers to Condition no. 7 of PA Ref 01/851 which requires the provision of a 10m long access strip to be maintained adjacent to the Broadmeadow River. Estimated that the apartment block is c. 11m- 12m to the edge of the River.
- No correspondence has been received by the planning authority from the OPW.

- The development, if permitted, would result in the loss of an area of public open space which is designated under the parent permission for use of all residents within the apartment development.
- The development would materially contravene the Open Space zoning objective as it would restrict access to the area.
- Requests An Bord Pleanála to uphold the decision of Meath County Council to refuse planning permission for the development.

6.3. Observations

6.3.1. An observation on the appeal was submitted by Denis Finn on the 21st of April. The following provides a summary of the points raised:

- Developer failed to provide permitted private open space for the ground floor apartments and communal open space for the development.
- Private open space is shown clearly on all permitted plans. This was never provided and the developer provided a public right of way in lieu of the permitted private open space.
- Proposed fencing seeks to prevent the use of the area by the general public.
- Riverwalk Court has not been taken in charge by Meath County Council.
- The developer has not complied with common area standards. Reference is made to deficiencies in the development.
- In response to the first reason for refusal it is stated that the applicant is happy to comply with OPW requirements regarding a 3m wide access.
- The proposed gate will be left open at all times to facilitate access by all residents of the apartment development to the open space and servicing access.
- Residents have no usable open space unless public access is stopped and fence erected to protect the residents entitlement to amenity space.
- Area behind Block 2 is owned maintained and insured by Riverwalk Owners Management Company.

6.3.2. A further observation on the appeal was received by Denis Finn c/o of Riverwalk Court Management Company on 26th of June 2020. The following provides a summary of the points raised:

- Access if and when required to the privately owned public open space designated for use of the residents of the development of Riverwalk Court is available and addressed within the correspondence from the OPW.
- OPW will seek owner's permission before entering the site and maintenance is generally every few years depending on growth build up on water channel.
- Communal and private open space is owned by Riverwalk Court Residents Management Company.
- Developer Rybo Partnership has left a number of deficiencies in planning standards in development including not providing screening or access from the ground floor apartments to their private open space.
- The developer has made the private open space into a public walkway creating many anti-social problems for apartment owners.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Maintenance Access to Broadmeadow River
- Residents Access to Open Space
- Compliance with Open Space Zoning Objective
- Impact on Residential Amenity
- Flood Risk
- Appropriate Assessment

7.2. Maintenance Access to Broadmeadow River

- 7.2.1. The planning authority's first reason for refusal outlines that the proposed development would contravene materially the requirements of Condition no. 7 of PA Ref 01/851. Condition no. 7 states that *"A 10m wide access strip shall be maintained adjacent to the Broadmeadow River. This strip shall be designed and maintained so as to accommodate mechanical plant access to the River"*.
- 7.2.2. It is stated within the appeal that the permitted access strip is owned and maintained by the Riverwalk Residents Management Company. A case is made that the OPW will continue to have access to maintain the banks of the Broadmeadow River. Such access would be agreed in advance of any planned work in accordance with OPW policy when seeking access to private property.
- 7.2.3. The appeal refers to consultation undertaken with the OPW and outlines that access arrangements to the River have been agreed. Email correspondence from the OPW is attached to the appeal which states that there is no objection to the proposal once a 3m gate is provided in the proposed west fence for access. It is furthermore stated within the appeal that access to the river is also provided to the east and west of the residents open space area.
- 7.2.4. On review of the parent permission file PA Ref 01/851, I note that consultation was undertaken with the OPW in respect of the development. Correspondence from the OPW attached to the file refers to the proposed re-alignment of the River channel and raises no objection to the proposal subject to the condition that a 10m wide strip for maintenance purposes. It is therefore clear that Condition no. 7 of the permission was attached on foot of the requirements of the OPW.
- 7.2.5. The planning authority's response to the appeal outlines that no correspondence has been received by the planning authority from the OPW. However, I consider that the correspondence attached to the appeal is sufficient confirmation that agreement has been reached between the applicant and the OPW in relation to access arrangements to the River for maintenance purposes.
- 7.2.6. The proposed 3m gate would be provided within the western fence in an area adjacent to the car park. The application drawings illustrate the provision of a 1m wide gate on this fence. While I note that no revised drawings are submitted in conjunction with the appeal to illustrate the proposed 3m access I consider that this

could be addressed via condition in the instance that the principle of the proposal was considered acceptable.

- 7.2.7. On-site inspection I note that vehicles parked adjacent to the western boundary of the open space restrict access to the open space area. I consider that alterations to the parking layout would be required in order to facilitate access to the site. This point could be addressed by means of condition.
- 7.2.8. Having regard to the above, I consider the requirements of Condition no. 7 of PA Ref 01/851 and the planning authority's first reason for refusal have been addressed within the application.

7.3. Residents Access to Open Space

- 7.3.1. The planning authority's second reason for refusal states that the proposed development, if permitted, would result in the loss of an area of public open space which is designated under planning reg. ref. no. 01/851 for the use of all residents within the apartment development.
- 7.3.2. A rationale for the proposal is set out within the third-party appeal and the observation on the appeal. It is stated that to date the area has been used as a public walkway which runs through the private open space and communal open space of apartment owners. The proposal seeks to prevent footfall by the public and to ensure that the owners of the ground floor apartments and all the residents of the complex have exclusive use of the public open space. Clarification is provided that the proposed 3m wide access gate will be unlocked to allow access to the area for residents and servicing access.
- 7.3.3. On this basis, I consider that the applicant has addressed the concerns raised within the planning authority's second reason for refusal and provided clarification that there will be no restrictions on access to the area by residents of the scheme.

7.4. Compliance with Open Space Zoning Objective

- 7.4.1. The site is zoned for open space purposes within the Ratoath Local Area Plan with an objective to *"to provide for and improve open spaces for active and passive recreational amenities"*. The planning authority's third reason for refusal states that the proposal would materially contravene the open space zoning objective pertaining to the site as it would restrict access to this area.

- 7.4.2. The 3rd party appeal outlines that the site is in private ownership and the area is maintained and managed by Riverwalk Management Company Limited. The open space area forms part of a wider mixed-use development at Riverwalk Court. The public notices refer to the provision of boundary fences to the east and west of residents communal and private open space.
- 7.4.3. The proposal seeks to prevent footfall by the public through the area due to anti-social behaviour and to ensure that the owners of the ground floor apartments and all the residents of the complex can enjoy their public open space.
- 7.4.4. On review of the planning history and existing site conditions it is clear that there is a discrepancy between the permitted and existing site layout, particularly in relation to the non-provision of private open space adjacent to Block 2 and the provision of a footpath directly adjacent to the block. The footpath connects from the resident's car parking area to the west of the site to the existing commercial units fronting Ratoath Road.
- 7.4.5. I consider that the manner in which this walkway is provided clearly impinges on the residential amenity of the occupants of Block 2. The footpath runs directly adjacent to the bedroom windows of Block 2 and in this regard limited privacy is afforded to the ground floor residents of the scheme.
- 7.4.6. The Site Layout Plan permitted under PA Ref 01/851 illustrates the area adjacent to the River Broadmeadow as open space and includes the notation "landscaping and screen planting to later detail". The area directly adjacent to Block 2 is hatched, appears to be enclosed, and has no associated notation. The appellant identifies this area as private open space associated with apartments 13,15,17 and 19. This format of private open space is similar to that currently provided for ground floor apartments of Block 3 as illustrated in the attached photographs.
- 7.4.7. I note that the planning authority's reason for refusal states that the proposed development materially contravenes the open space zoning objectives pertaining to the site on grounds that it would restrict access to the area.
- 7.4.8. On review of the planning history pertaining to the site, existing site conditions and the small-scale nature of the proposal I consider that the reference to material contravention is misplaced in this particular instance. The proposal relates to enclosure of an area of permitted open space within a wider mixed use residential

and commercial development. The open space area will be fully accessible to all residents of the scheme and in this regard the proposal would not restrict access. The Board should not, therefore, consider itself constrained by Section 37(2) of the Planning and Development Act.

- 7.4.9. The site is in private ownership and the applicant seeks to implement the development as permitted. No right of way is indicated through the site within the Ratoath Local Area Plan. No conditions were attached to the parent permission pertaining to the site which related to the provision of public access to the area for amenity purposes. While the area is used by members of the public as a route to existing retail and commercial units within the scheme, I note that alternative access is provided on the public footpath to the north of the site and from Ratoath Road.
- 7.4.10. Limited private and communal open space is provided within the entire complex and the area adjacent to the river would serve as communal and private open space for the residents of the scheme. The proposal does not seek to develop the space but merely to enclose it to provide for private and communal open space for the residents of the scheme as permitted and to address instances of misuse and anti-social behaviour.
- 7.4.11. In this regard I consider that the proposal, through the provision of enhanced security measures for residents of the scheme, would facilitate the use of the space for passive and recreational amenities in accordance with the sites open space zoning objective. The proposal would also contribute to the A1 zoning objective pertaining to the remainder of the site which seeks to *“protect and enhance the amenity of developed residential communities”*.
- 7.4.12. Having regard to the above reasons and consideration I consider that the proposal is in accordance with the open space zoning objectives pertaining to the site.

7.5. **Flood Risk**

- 7.5.1. The appeal site is located within an identified flood risk zone Flood Zone B and partially within Flood Zone A. The proposed constriction of fences would not represent a vulnerable format of development as detailed within the Flood Risk Management Guidelines.

- 7.5.2. The planner's report which informs the decision of Meath County Council to refuse planning permission for the proposal outlines that the proposal has the potential to impede access to the Broadmeadow River in the instance of a flood event. It is therefore stated that the proposal poses a risk in terms of flood risk. I note that flood risk is not cited as a reason for refusal and no report has been received from the Environment Department of Meath County Council.
- 7.5.3. As detailed within Section 7.2 of the appeal, the appellant has engaged in consultation with the OPW in relation to the proposal and agreement has been reached in terms of access to the River when and if required. It is stated that such an agreement is commonplace between the OPW and owners of private developments.
- 7.5.4. In this regard and having regard to the limited area adjacent to the River that would be enclosed by the proposal, I do not consider that the proposal would represent a significant concern in respect of flood risk.

7.6. Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment 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

- 8.1. I recommend that planning permission is granted for the proposed development for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the pattern of development in the area and the small-scale nature of the proposed development it is considered that, subject to compliance with the conditions set out below, the proposed development would facilitate the use of the open space for passive and recreational purposes and enhance the residential development of which it is a part. The proposed development 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 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. Prior to the commencement of development, the developer shall submit revised drawings for written agreement of the planning authority illustrating the following:
 - (a) the provision of a 3m gate within the western fence to facilitate maintenance and servicing access to the Broadmeadow River.
 - (b) Revised car parking layout of the parking area adjacent to the western fence to facilitate servicing access.

Reason: In the interest of proper planning and development of the area.

3. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

Stephanie Farrington
Senior Planning Inspector

20th of August 2020