



An  
Bord  
Pleanála

## Inspector's Report ABP 308096-20

### Development

Construction of four dwelling houses as part of Ard Aoibhinn housing development currently under construction (permitted under 99/5878, 14/4845) in place of No. 39 and amendment to permitted open space, and connection to temporary wastewater treatment plant permitted under 07/10356)

### Location

Ard Aoibhinn, Laherfineen, Innishannon, Co. Cork

### Planning Authority

Cork County Council

### Planning Authority Reg. Ref.

20/5236

### Applicant

Dunboy Construction & Property Developers Ltd.

### Type of Application

Permission

### Planning Authority Decision

Refuses permission

### Type of Appeal

First Party against refusal

### Appellants

Dunboy Construction & Property Developers Ltd.

**Observers**

Brendan Dempster

Federico Gilli

Thomas Davis

**Date of Site Inspection**

8<sup>th</sup> December 2020

**Inspector**

Mary Kennelly

## 1.0 Site Location and Description

- 1.1.1. Innishannon is a key village which is situated on the N71 between Cork and Bandon. The village is located c.6km to the east of Bandon and has a good range of facilities and services including a small supermarket, shops, churches, cafes, pubs and restaurants and a petrol station. The site is located within the built-up area of the village in an established housing estate, Ard Aoibhinn, which is c.400m to the north of the main street. Ard Aoibhinn estate contains 51 houses and is accessed from Church Hill/Cork Road. This road rises steeply from the village and provides access to several one-off houses and a number of small housing estates. The houses within the estate are generally detached or semi-detached and are arranged around two cul-de-sacs with a central area of open space and a few small strips of open space alongside the internal roads.
- 1.1.2. The appeal site is located in the north-eastern corner of the estate and includes road frontage to Cork Road. There is a row of one-off houses to the north and a small housing estate (Church Hill) opposite on the eastern side of the Cork Road. The entrance to the estate is located at the south-eastern extremity and is separated from the appeal site by a detached bungalow fronting Cork Road and House Nos. 34-38, which lie outside the red-line boundary. However, the red line includes all of the internal roads and the areas of open space within the estate as well as an area of land to the northwest of the estate and the site of the wastewater treatment plant. It also includes House Nos. 40-43, but all other existing houses within the estate are excluded.
- 1.1.3. The site, which is roughly rectangular in shape, has a stated area of 2.206 hectares. It is located immediately adjacent to House No. 40 and comprises the site of permitted unit No. 39 together with an area of permitted public open space, all part of the permitted layout under the parent permission for the estate (99/5878, as extended under 14/4845), which had granted permission for 52 no. dwellings. The site of the appeal has been the subject of two previous applications for the construction of 6 houses in place of No. 39 and the adjoining POS, both of which have been refused by the P.A. and the Board (303215 and 305506).

## 2.0 Proposed Development

- 2.1.1. The proposed development comprises the construction of 4 no. dwelling houses on the site in place of No. 39 and the adjoining POS. The proposed units would be 2-storey, semidetached houses and would face south. It is proposed to extend the existing internal access road to the east in the form of a cul-de-sac with a turning area opposite the proposed dwellings. The ground levels fall away to the east and it is proposed to cut and fill in order to provide two level platforms for each pair of houses, such that they would step down the slope towards Cork Road at 1.25-1.5 intervals. The existing ground levels also rise quite steeply to the north and it is proposed to continue the existing boundary treatment to the rear of No. 40 (comprising a stone gabion retaining wall and embankment). The existing roadside boundary comprises an embankment with mature hedging, which is currently broken by the construction entrance to the estate with hoardings. It is proposed to retain the natural roadside boundary, to continue the retained stone ditch, and to augment it with tree planting. Inside this natural boundary, it is proposed to provide a concrete post and timber panelling fence (1.8m high).
- 2.1.2. There would be a narrow green strip of open space directly to the south of the extended cul-de-sac which would have a hedge screen planted along the boundary with the private dwelling to the south. It is proposed to provide two visitor parking spaces within this green space and each dwelling house would have two parking spaces in the front garden. Each house would have a floor area of 117.5m<sup>2</sup> and would have 3 bedrooms. The proposed design and external finish would reflect that of the existing houses in the estate. The ridge height is given as 8.15m and the eaves height at 4.9m. The windows on the first and ground floors on the side elevations are to be fitted with frosted glass. An equivalent area of POS is also proposed to be provided in the undeveloped lands to the north of House Nos. 48-49.
- 2.1.3. It is proposed to connect to the public water supply and to the existing wastewater system. Permission was granted for a temporary wastewater treatment plant, (07/10356), which is situated to the northwest of the site. The existing system involves discharge of wastewater via gravity to the pumping station inside the main vehicular entrance and the wastewater is then pumped up to the wastewater treatment plant.

2.1.4. The application is accompanied by:

- Planning Statement (Joe Bonner Planning Consultant)
- Architectural Design Statement (Mary O'Connell Architect)
- Letter from Irish Water re pre-connection enquiry
- Correspondence confirming capacity of wastewater treatment system to cater for the development.
- Section 96 Exemption Certificate.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. The P.A. decided to refuse planning permission for three reasons. In summary, these were based on: -

- **Loss of public open space** - Encroachment on lands designated as public open space to serve the entire housing estate granted under 99/5878, (as extended) which governs the development of the lands, would materially contravene the terms and conditions of that permission, and would seriously injure the visual and residential amenities of the estate and set an undesirable precedent.
- **Impact on visual amenity** - Would constitute a visually prominent and visually obtrusive development due to the elevated nature of the site, the uncertainty regarding the estate road gradient and the height and proximity of the proposed houses to the public road, which would seriously injure the visual amenities of the area.
- **Inadequate open space provision** – the proposed area of open space (to the north) is not considered to be a suitable alternative due to its remote location from the rest of the estate and lack of passive surveillance and would, therefore, injure the residential amenities of the area.

## 3.2. **Planning Authority Reports**

### 3.2.1. **Planning Reports**

The Planner's report dated 11/08/20 notes the planning history of the site, the contents of the technical reports and reports from the prescribed bodies summarised below, as well as the issues raised in the third-party objections. It is noted that the main changes involve the reduction in the number of houses proposed from 6 to 4, the altered orientation, ameliorated levels and compensatory green space. However, it is also noted that there have been no material changes in planning policy in the intervening period. Notwithstanding the proposed changes, the concerns set out in the previous reasons for refusal remain, particularly with regard to the loss of open space and the proposed replacement with an alternative which is inappropriate for recreational and amenity purposes.

3.2.2. The orientation, layout and finished floor levels were considered to be an improvement on previous schemes, but it was considered that the proposal would nevertheless result in a visually prominent development at this location which would be better served by the buffer provided by the POS as originally permitted. The comments of the Estates Engineer (see below) regarding the gradient of the estate road and the likely impact on the proposed dwelling house and boundary treatment with the public road, were noted and it was considered that the visual impact on the surrounding area could be even more severe than indicated on the submitted drawings. The overbearing impact on the house to the south, as referenced in the Board's previous refusal, has been addressed to some extent by the revised layout and orientation of the houses. However, it was considered that the impact on this property cannot be fully assessed given the concerns with respect to the uncertainty regarding the road gradient on the FFLs.

3.2.3. **Refusal** of permission was recommended.

### 3.3. **Other Technical Reports**

3.3.1. **Area Engineer's report** – no objection.

3.3.2. **Public Lighting Engineer** – recommends deferral.

3.3.3. **Housing Officer**– It was noted that there are no Part V requirements.

3.3.4. **Estates report (02/07/20)** – agrees with previous reasons for refusal but if permission is to be considered, FI would be required regarding the following

**Roads** – gradient of estate road to front of proposed houses is too steep at 7-10% and fails to comply with the Department’s ‘Recommendations for Site Development Works for Housing Areas’ guidelines in respect of gradients and minimum dimensions for turning areas. Accordingly, the design of the entire scheme needs to be revised as the necessary changes to the road gradient will have an impact on the FFLs of the proposed houses and the boundary treatment required at the end of the cul-de-sac, where the gradient of the road will need to be increased by c.1.2m. It is stated that the layout should be amended to comply with the guidelines and that the levels should correspond with the FFLs for the proposed houses, levels for the sewers and the proposed boundary treatment.

**Wastewater treatment system** – at present, wastewater from the entire development gravitates through the estate towards a pumping station (temporary) which is located just inside the main entrance to the housing estate. Wastewater is then pumped to the temporary WWTP to the north of the estate, before the treated effluent is discharged via percolation to ground. The proposed development will not be able to avail of this gravity system due to the gradient of the road serving the site. Instead, it will be necessary to lay a new sewer along the public road to the east towards the pumping station. It is noted that the applicants have stated that the WWTP has a design capacity of 250PE, which would be adequate to cater for the proposed development. It will be necessary to obtain assurances from the developer that the existing plant is being maintained and operated in accordance with the terms of the planning permission for the plant (07/10356).

**Construction entrance** – clarification regarding whether the existing construction entrance from the local road will be used.

**Retaining structures along northern boundary** – further details re design required.

3.3.5. **Public Lighting Report (26/06/20)** – Deferral recommended pending submission of further information re public lighting.

3.3.6. **Housing Officer’s Report (21/07/20)** – confirms no requirement for Part V in respect of this development.

3.3.7. **Engineer's Report (7/8/20)** – No objection subject to conditions.

### 3.4. **Prescribed Bodies**

3.4.1. **Irish Water** - no response received.

3.4.2. **Inland Fisheries Ireland** 10/07/20 noted that it is proposed to discharge effluent to the public sewer following treatment. As the public sewerage system in Innishannon is currently overloaded, both organically and hydraulically, it was requested that a condition be attached to any planning permission preventing occupation of any units until these works have been completed and fully commissioned, or an alternative method of effluent disposal is put in place (other than the public sewer).

### 3.5. **Third Party Observations**

Objections received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the 3<sup>rd</sup> Party Observations received and summarised in section 6 below.

## 4.0 **Planning History**

4.1.1. **P.A. Ref. 99/5878** – Planning permission granted for 52 dwellings and site development works. Duration of permission was for 8 years.

4.1.2. **P.A. Ref. 07/10356** – Planning permission granted for temporary wastewater treatment plant

4.1.3. **P.A. Ref. 14/4845** – Extension of duration of permission 99/5878 until 01/11/19.

4.1.4. **ABP.303215-18 (PA Ref 18/6518)** – Board refused planning permission in April 2019 for the construction of 6 houses on the site, including connection to the temporary WWTP. The development was proposed to replace House No. 39 and the permitted POS with a cul-de-sac development of 6 houses oriented at a 90-degree angle to the existing line of development. Part of Ard Aoibhinn was under construction at the time. Permission was refused on the grounds of material contravention of the terms and conditions of the parent permission (99/5878) due to encroachment on lands designated as public open space serving the overall estate, undesirable precedent within the residential estate and impact on the visual and



residential amenities of the area. The latter issue related to the elevated position above the local road, the layout and design of the development and the close proximity to the dwelling to the south, which would result in a development which would be out of character with the pattern of development in the area, would be overbearing on the existing dwelling and would seriously injure the residential and visual amenities of the area.

- 4.1.5. **ABP.305506 (PA Ref. 19/05762)** – Board refused permission in February 2020 for construction of 6 houses on the site as part of the estate, which was under construction at the time, including connection to the temporary WWTP. This application was similar to that previously refused by the Board (303215), involving a similar layout and orientation, but with some differences. These related principally to the proposal to provide a compensatory area of POS at the northern end of the estate, removal of windows that would have potentially overlooked an adjoining house and the raising of the FFL of the southernmost house by 0.5m.

Permission was refused for two reasons, which were broadly similar to the previous reasons. The first reason related to the significant reduction in the amount of usable open space serving the estate and would be contrary to the permission governing the development of the estate and the consequent impact on the residential and visual amenities of the residents and the undesirable precedent that it would create. The second reason related to the visual amenities of the area and the overbearing impact on the house to the south by reason of the elevated nature of the site, the layout, scale and orientation of the proposed dwellings, the FFLs, height and proximity of these houses to the public road and to the neighbouring dwelling to the south.

## 5.0 Policy Context

### 5.1. Cork County Development Plan 2014

**Chapter 3 – Housing** – Existing Built-Up Areas include all lands within a development boundary which do not have a specific zoning objective. It sets out the housing policies and objectives including the following:

**HOU 3-1 Sustainable Residential Communities** – reference to national guidance on achieving high quality neighbourhoods.

**HOU 3-2 Urban Design** – high quality design and layout required.

**HOU 3-3 Housing Mix** – Intention to seek a mix of house types and sizes in accordance with the Joint Housing Strategy and National Guidelines.

Notwithstanding the desire to achieve higher densities (as set out in the Sustainable Residential Development in Urban Area Guidelines), it is acknowledged that there is a need to allow some lower density development in order to achieve a broader range of house types, particularly where there is a high demand for development in unserviced rural areas.

**HOU 4-1 Housing Density on zoned lands** – The site is designated as ‘Medium Density B’, with a recommended minimum of 12/ha net density and 25/ha maximum.

## 5.2. **Bandon Kinsale District Local Area Plan 2017**

5.2.1. Innishannon is designated as a ‘Key Village’. The strategic aim is to establish Key Villages as the primary focus for the development of rural area and to facilitate population growth at a scale, layout and design that will allow for the provision of services as well as reflect the character of each village, where water services and wastewater infrastructure is available.

5.2.2. The overall aim for Innishannon is to encourage consolidation of the village within its rural setting and to promote sympathetic development in tandem with the provision of services. One of the key considerations for the future development of the village is the provision of wastewater treatment facilities. Specific Development Objectives for Innishannon include encouraging the development of up to 150 additional dwelling units during the plan period (DB-01). It is noted that at the time of writing the LAP, the number of existing houses was stated to be 315. The appropriate scale of development for Key Villages (Table 4.1) is 25 units. However, it is further stated that

Individual schemes in excess of the recommended scale set out in the above table may be considered where it is demonstrated that the overall scheme layout reinforces the existing character of the village and the scheme is laid out, phased and delivered, so as not to reflect a residential housing estate more suited to a larger settlement.

### 5.3. **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)**

In order for small towns and villages to thrive and succeed, it is stated that their development must strike a balance in meeting the needs and demands of modern life but in a way that is sensitive and responsive to the past. New development should contribute to compact towns and villages and offer alternatives to urban generated housing in unserviced rural areas. The scale should be in proportion to the pattern and grain of existing development. In terms of densities, centrally located development in small towns and villages could achieve densities of up to 30-40 dw/ha., whereas edge of centre sites should achieve 20-35 dw/ha. However, in order to offer an effective alternative to single houses in the surrounding countryside, it may be appropriate in a controlled situation to allow a density of 15-20 dwellings at the edge of a town or village, provided that it does not represent more than 20% of the housing stock of the village.

### 5.4. **National Planning Framework (2018)**

The NPF seeks to focus growth in cities, towns and villages with an overall aim of achieving higher densities than have been achieved to date.

### 5.5. **Natural Heritage Designations**

Courtmacsherry Bay SAC (site code 001230) and Courtmacsherry Bay SPA (Site code 004219) approx. 12km to the southwest.

## 6.0 **The Appeal**

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

6.1.1. The First Party Appeal may be summarised as follows:

**Evaluation of public open space provision** – The assessment of the adequacy of the public open space provision must have regard to the standards and requirements of the County Development Plan and the relevant Ministerial Guidelines. The

quantum of existing open space within the estate (16% of total site area) exceeds the requirements of both the CDP (12-18%) and the Sustainable Residential Development in Urban Areas Guidelines (15%). This quantum of POS is also consistent with recent planning decisions in the area (e.g. ABP.302430). The existing residents of the estate have never had the benefit of the area of POS permitted on the site. Thus, the residential amenities of the estate will not be adversely affected by its non-provision.

**Appropriateness of permitted and alternative POS** – the site of the appeal comprises a steeply sloping site, which is remote from most of the houses within the estate and is poorly overlooked by houses. There would be a ground level difference of 8 metres across 50 metres, equating to a gradient of 16%. It is also located adjacent to the public road. It is unsuitable as a multi-use or neighbourhood play area for these reasons. In contrast, the alternative open space to the north is at a safe distance from the public road, is only accessible from within the estate and is overlooked by several houses. It is also a large level area which is more suitable than the steeply sloping hill within the existing site.

**Impact on residential amenities** – It is strongly disputed that the loss/reduction in the open space provision would materially and/or adversely affect the residential amenities of the estate, as stated in previous reasons for refusal. Furthermore, there would be no overlooking of any of the properties to the north, south or on the opposite side of the road to the east.

**Visual amenity – elevated site and uncertainty regarding FFLs** – the elevated nature of the site, as referred to in the second reason for refusal, is characteristic of the topography of the area. If this is to be relied upon, no lands to the north of the site would be capable of development. The uncertainty regarding the FFLs of the proposed dwellings is stated to relate to the P.A.'s view that the gradient of the proposed road is too steep (7-10%). It is noted that the 1998 Guidelines (referred to by the Estates Engineer), recommends a road gradient of between 0.5 and 5% with an allowance of 1%. It is stated that the length of the road at c.35m facilitates a reduction in the gradient. As such, the road level could be raised to 0.525m at the eastern end and could possibly be raised by a further 200-300mm, if necessary. It is disputed that the House FFLs need to match that of the road.

**Visual amenity – prominence due to height and proximity to road** – it is stated that the FFLs of proposed Houses 39C and 39D will be 2.75m lower than that of House No. 38, which is set back by 35m from the public road and it stated to be visible from Church Hill (Google Maps Streetview photo enclosed to demonstrate). However, the Board should note that the existing house referred to appears to be No. 40 (last one constructed on site), which is located c.45m from the public road.

**Material contravention** – It is clarified that the reference to material contravention does not relate to material contravention of the Development Plan but relates to an alleged material contravention of the terms and conditions of the parent permission. It is stated that the provision for this in the Planning and Development Act 2000 (as amended) is contained in ‘The Reasons for Refusal which Exclude Compensation’ (Fourth Schedule), which includes where “the development would contravene materially a condition attached to an existing permission for development”. However, the appellant submits that this is applicable to a single specific condition rather than a non-precise term such as “terms and conditions”. The proposed development does not materially contravene the parent permission, as the proposed POS provision complies with the policy requirements of the CDP and the Municipal District LAP and is consistent with other planning decisions in the area.

**Compliance with parent permission** – The parent permission (99/5878) was subject to 87 conditions, none of which have been specified by the planning authority in its reason for refusal as having been contravened. Condition 1 states that “The permission is for 52 houses based on the site layout plan of 27/04/06 except as amended by the attached conditions”. It is noted that Condition 73 required the provision of a multi-use games area (900m<sup>2</sup>) and a neighbourhood play area (100m<sup>2</sup>), the details of which were required to be agreed prior to the commencement of development. It is submitted that the POS area that would be displaced by the proposed development would have been too small, too steep and too remote to qualify as one of the open space areas to comply with this permission. Neither of these conditions is being contravened. By changing the site size and providing for additional public open space, the matter of material contravention has been eliminated.

**Undesirable precedent** - The inclusion of this issue implies that the applicant may seek to build upon the balance of public open space at some time in the future. It is

confirmed that the applicant has no intention of doing so and would be happy to accept a condition to this effect. Each case must be determined on its merits and in accordance with the standards and policies of the Development Plan. Furthermore, the Board cannot refuse permission for something that it thinks the applicant may do in the future. Reference is made to case law (Kelly v. ABP) in respect of this matter. It is submitted that the Board cannot take into account the fact that a grant of planning permission may facilitate future breaches of the planning code.

**Judicial Review** – The developer has been granted leave by the High Court to apply by way of Judicial Review of the Board’s decision under Ref. 303215 (P.A. Ref. 18/06518). The matter is currently in abeyance due to Covid-19 restrictions. However, it is pointed out that the matters raised in the grounds included an erroneous reliance on a material contravention of the terms and conditions of the parent permission, without clarification of which elements of that permission were being breached in a material way. It is requested, therefore, that the Board considers the application/appeal afresh, rather than relying on previous decisions of the Board or the Planning Authority. It is further requested that the Board provides adequate reasons for reaching its decision.

## 6.2. **Planning Authority Response**

The P.A. has not responded to the grounds of appeal.

## 6.3. **Observations**

- 6.3.1. Observations were received from Brendan Dempster (1 Church Hill - opposite site), Federico Gilli (opposite site on Church Hill), and Thomas Davis (property to north on Church Hill). The main points of these observations may be summarised as follows:

**Parent permission** - The proposed development would contravene the terms and conditions of the parent permission. This is the third appeal and the previous reasons for refusal have not been adequately addressed.

**Overdevelopment** - The proposal would represent overdevelopment of the site and would have a material adverse effect on the residential amenities of the estate and would seriously injure the visual amenities of the area.

**Inadequate open space** - The public open space provision is inadequate and many of the existing spaces are unusable. The development would result in the loss of valuable green space with little space for landscaping and would fail to fulfil the aesthetic and recreational function of open space in a housing estate. The developer has not complied with Condition No. 73 and the area to be developed was part of the original open space. Many of the areas included in the developer's calculation of open space provision are unusable due to steep gradients, narrow width and proximity to car parking and/or the public road.

**Visual amenity** - The proposal would be visually obtrusive with the backs of the houses fronting the public road at an elevated level and would destroy the character and visual amenity of the area. The level of the proposed houses would be 4-5 metres higher than the public road, which would be overbearing. The existing roadside boundary is very fragile, and concern is expressed regarding the ability of the slope to contain the additional houses and road without slippage. Although the existing trees are to be retained, it is doubtful that the existing trees and hedges would not be undermined by the development.

**Retaining wall to north and landscaping requirements** – The developer has failed to build a retaining wall to the north with Mr. Davis' property, which is a safety hazard and was outlined in the boundary treatment plan. The developer has failed to comply with several conditions of the parent permission regarding the planting of native trees and hedging and the retention of existing trees.

## 7.0 **Assessment**

I consider that the issues arising can be assessed under the following headings:

- Principle of Development
- Adequacy of public open space provision
- Impact on Residential Amenity
- Impact on Visual Amenity
- Precedent
- Other matters

- Environmental Impact Assessment
- Appropriate Assessment

## 7.1. Principle of Development

- 7.1.1. The location of the site within an established housing estate which is within the development boundary of this Key Village, and in close proximity to the village centre, makes it a suitable location for residential development in principle. The village is earmarked for additional housing development with a substantial increase in the number of units envisaged, and the density of development at 17 units per hectare would accord with the County Development Plan density guidance of Medium Density B, which is 12-25 dwellings per hectare. The main issue, therefore, is whether it is appropriate in principle to construct four housing units on lands that have been designated for development as a single house with c. 1,500m<sup>2</sup> of public open space to serve the overall housing estate.
- 7.1.2. Given that the Board has made a determination on two previous development proposals of a similar nature on this site in the recent past, it is considered appropriate to focus primarily on the material differences between the current and previous schemes, and on any other material changes in circumstances in policy terms or on the ground. However, as the appellant has also raised the appropriateness of the issue of whether the proposed development materially contravenes the terms and conditions of the parent permission, this matter should also be addressed.
- 7.1.3. There have been no material changes in policy since the last decision of the Board on 305506. The only changes on the ground that I observed on site were that the lands to the north of the estate (between the houses and the wastewater treatment plant) have been levelled and grassed and that House Nos. 40-43 have been completed. The nature, design and layout of the proposed development has, however, been substantially revised. The number of dwelling units has been reduced from 6 to 4, the orientation of the dwellings has been altered and the ground levels and FFLs of the proposed dwelling have been altered. Furthermore, the current proposal contains a specific proposal for a compensatory or alternative area of public open space, Area 8, with a stated area of 700m<sup>2</sup>.



- 7.1.4. I would concur with the views of the planning authority that the changes to the design, layout and density of the development represent significant improvements on the previous proposed schemes. The current proposal would result in the extension and continuation of the existing line of development in an easterly direction. This would mean that the side gable of the end house would face the public road rather than the rear elevations and boundary fences of six rear gardens. The ground and finished floor levels have also been improved in the submitted drawings, although the P.A. has raised concerns regarding the gradient of the proposed road and the consequent effects on the FFLs of the houses. These matters will be addressed in more detail in the following sections, but it is considered that the overall approach to the development is more consistent with the pattern of development within the estate and would result in a more appropriate urban design solution.
- 7.1.5. The issue of the replacement of a large area of POS and one house with four houses and an extension of the estate road still remains one of the most central issues of the acceptability of the proposed development. The adequacy of the quantum, design and location of the public open space provision within the estate, including the appropriateness of the alternative POS, will be addressed in the following section. Regardless of whether the proposed development would materially contravene a specific condition of the parent permission (99/5878) or not, it is considered that the appropriateness of the development within the context of the overall plan for the housing estate is a material planning matter which should be addressed by the Board.
- 7.1.6. The site of the proposed development is one of two strategic areas of public open space intended to serve the needs of the residential estate, (as permitted under 99/5878). One of these spaces is centrally located with a combined area of 3,342m<sup>2</sup>, i.e. Area 3 (2,256m<sup>2</sup>) plus the adjoining Area 5 (1086m<sup>2</sup>). The other is the site of the appeal which, (according to the Planning Report submitted with the planning application that was the subject of the appeal under 305506), represented an area of 1,520m<sup>2</sup> out of a total POS provision of 7,070m<sup>2</sup>. Thus, the main central area represents almost half of the original designation of POS for the estate and the site of the appeal represented approx. a fifth of the designation.
- 7.1.7. It is considered, therefore, that the replacement of one of these strategic areas could only be considered to be acceptable in principle if it does not undermine the

recreational and amenity functionality of the estate. In this respect, it is considered that the designation of this particular site as one of the strategically larger areas of open space is likely to have been proposed for the dual purposes of recreation and amenity, as it would have been large enough to be set out and landscaped as a usable space, notwithstanding the steep gradient, and would serve as a visual and physical buffer from the public road, which would help to integrate the development into the surrounding area. It would also have been a focal point at the end of the cul-de-sac. Thus, it is considered that any revised development of the site in question should address each of these issues to ensure that an equivalent useable open space is provided to serve the needs of the estate and that the housing estate is provided with an appropriate buffer from the adjoining road.

## **7.2. Adequacy of public open space provision**

- 7.2.1. The appellant considers that the quantum of open space within the overall estate (16% of site area) exceeds the existing open space requirements of the current CDP (12-18%) and the Sustainable Residential Development in Urban Areas Guidelines (15%), and that the existing/designated POS that would be displaced is unsuitable due to its remote location, steep gradient and that it is poorly overlooked. I would agree that the quantity of existing public open space, which amounts to 5,602m<sup>2</sup> (excluding the appeal site), represents c.16.58% of the total site area, and as such meets the minimum quantum requirements of the current CDP. However, the policy guidance which includes the County Development Plan and associated Recreation and Amenity Policy, the County Design Guide for Residential Estate Development, as well as the Sustainable Residential Development in Urban Areas Guidelines and associated Urban Design Guide, is not confined to quantity standards and there is greater emphasis in this guidance on the quality of open space. Qualitative standards as set out in the guidance include appropriate design and layout in terms of being suitably proportioned, avoidance of narrow tracts and 'left over spaces', accessible locations, adequate supervision or passive surveillance and provision for biodiversity.
- 7.2.2. The existing public open space provision within Ard Aoibhinn is distributed over 7 separate areas, as shown on Drawing No. 202013-PP07 submitted with the planning application. They range in size from small pockets of c.200m<sup>2</sup> to the main central area of 2,256m<sup>2</sup>. Most of the spaces are in the form of verges and long narrow strips

adjoining the internal road network. The only area with a reasonable size which is well proportioned is the central area (Green Area 3), but this area is steeply sloping. Nevertheless, it is centrally located and is overlooked by a large number of houses and serves the estate well. Although the designated POS within the site of the appeal is more remote being at the end of a cul-de-sac, it is only c.80m from the central open space. It is well proportioned and of a good size, although it has its limitations in terms of a steep gradient, but this could be addressed in the design and layout of the space by means of landscaping and contouring. It would be directly adjacent to the side gable of a row of houses with an opportunity for a degree of informal/passive surveillance obliquely from the windows to the front, side and rear of the houses. It would also be overlooked by the houses opposite the site on the public road. Furthermore, it is considered that it is visually well located and would help to integrate the existing housing within the estate with the established development on the public road.

7.2.3. Although the appellant claims that there would be no loss of amenity by the development of this space, as it has never been developed, I do not consider this to be a reasonable justification for the redevelopment of the space. It is considered, therefore, that the designated area fulfils most of the requirements for a good quality useable open space area and that with appropriate landscaping, would be readily integrated into the estate and the wider area. The Recreation and Amenity Policy (adopted in July 2006) states that the development of existing public/private open space areas for other purposes will not be permitted unless a suitable alternative open space is provided, or the enhancement of an existing facility can be achieved as a replacement in the same area.

7.2.4. The compensatory (or alternative) open space area is located at the northern end of the estate. It is sited within an area of undeveloped land which separates the estate from the temporary WWTP. The proposed Green Area 8, with an area of 700m<sup>2</sup>, is shown as a long narrow strip at the end of the cul-de-sac and sits alongside the access track leading to the WWTP. It is considered to be an improvement on the previous scheme (305506), whereby it had been indicated that a long and narrow strip would be provided immediately to the rear of House Nos. 44-48 but compares very poorly to the designated open space as permitted under the parent permission. The compensatory area is considered to be poorly proportioned, remotely located

and not well overlooked. I would concur with the planning authority that it is not a suitable alternative to the permitted area of open space.

- 7.2.5. In conclusion, it is considered that the proposed development which would displace an area designated as open space to serve the overall housing estate would result in the loss of a valuable area of open space, notwithstanding its limitations and the fact that it has not yet been provided, which would result in a serious loss of residential amenity and would militate against the character and overall design and layout of the housing estate of which it forms an integral part.

### **7.3. Residential amenity**

- 7.3.1. As stated above, the proposed development of an area designated as public open space would seriously injure the residential amenities of the housing estate by reason of the loss of a valuable green space area which is readily accessible, well-proportioned and with appropriate landscaping, would form an attractive and useable area for recreation and amenity for the residents. It would also be a visually and functionally important element in the urban design of the estate and would provide for an attractive amenity space at the end of the cul-de-sac and in the transitional area between the estate and the village.
- 7.3.2. The design and layout of the proposed houses would not give rise to any significant degree of overlooking or overshadowing of the adjoining residential properties. The issues relating to the house to the south have been resolved by the revised layout and orientation. The outlook from the residential properties on the eastern side of the road is likely to be diminished by reason of the proximity of the proposed dwellings and the elevated ground levels. However, it is considered that this impact alone would not be sufficient reason to reject the proposal.

### **7.4. Visual amenity**

- 7.4.1. The site is quite prominent and in an elevated position above the public road. At present it is well screened by mature dense trees and hedgerows on the northern, southern and eastern boundaries. It is proposed to retain these boundaries as they are and to augment them with additional screen planting. However, I would concur with the observers who have pointed out that the roadside boundary (eastern) appears quite fragile and the trees on this boundary seem to be of a poor quality and are most likely self-seeded. The proposed development would involve quite a

substantial amount of excavation and regrading of the site and it is doubtful that the vegetation would survive. It is also likely that a new retaining wall would be required along the roadside boundary.

7.4.2. The proposed Finished Floor levels are at least 2 metres above the level of the public road as shown on Drawing No. 202013-PP04. However, the levels on the public road increase quite sharply to the north of the site and fall quite sharply to the south. Thus, the proposed dwellings, which will be c.8m from the public road boundary, with a ridge height of c.8 metres, will tower over the road in this location. It is considered that they would be an obtrusive feature which would be very prominently visible as one travels northwards along Church Hill. Any screen planting would take a long time to be effective. It is considered that the visual buffer which would be provided by the permitted open space area at this location would be lost and the proposal would therefore result in serious injury to the visual amenities of the area.

7.4.3. Photomontages and photographs of the site have been submitted by both the first party appellant and the third-party observers. It is considered that neither of these accurately depict the existing or proposed scenarios. For example, the first party's photograph of the existing side gable of No. 38 (which should read No. 40) does not include the highly visible elevated ground to the east, which is prominent in views as one ascends the hill, and the third-party photomontages do not take account on the proposed lowered FFLs and reduced gradient of the road.

7.4.4. The Estates Engineer pointed out that the gradient of the proposed road is too steep and would have to be reduced, which is likely to have consequences for the FFLs of the proposed houses. Although the first party response to the appeal stated that it would be possible to reduce the gradient by raising the level of the road and that the FFLs of the proposed dwellings would not have to match the level of the road, I would concur with the Estates Engineer that this raises considerable uncertainty in a situation which is already likely to cause injury to the visual amenities of the area.

## 7.5. Precedent

7.5.1. Whilst it is accepted that each application/appeal must be considered on its merits and in accordance with the policies in place at the time, I would agree that a grant of

permission to construct four dwelling units on the site of an area of designated open space and a single unit, is likely to create an undesirable precedent for future development within the estate and elsewhere in the area. Such a precedent would make it more difficult for the planning authority to refuse similar development proposals and would undermine the Recreation and Amenity Policy which opposes the development of existing public open space areas for other purposes without the provision of a suitable alternative open space, or an existing space is enhanced, as a replacement in the same area.

## 7.6. Other matters

- 7.6.1. **WWTP** – the applicant proposes to connect to the temporary WWTP to the north of the site, which has adequate capacity. However, the Estates Engineer pointed out that the current gravity system to the pumping station to the south, with pumping to the WWTP to the north, would not be appropriate due to the gradient of the proposed road, and that a new sewer would need to be laid along the line of the public road instead. It is further noted that permission has been granted for a new WWTP to serve Innishannon at Dromkeen, which would have capacity for up to 2200PE, and which are scheduled for completion in 2020. As the applicant has proposed to connect to the temporary WWTP, however, it is considered that should the Board be minded to grant permission, an appropriately worded condition requiring an alternative sewer to the pumping station or connection to the new WWTP for the village should be attached to any such permission.
- 7.6.2. **Road gradient** – as discussed above, the gradient of the proposed road is too steep, and any revision is likely to have an impact on the proposed FFLs for the proposed houses. Thus, should the Board be minded to grant permission, appropriately worded conditions should be attached to any such permission requiring revised details of the road gradient and associated ground levels and FFLs for the adjoining residential sites/houses.
- 7.6.3. **Construction entrance** – should the Board be minded to grant permission, a condition should be attached requiring the submission of a Construction and Environmental Management Plan including a traffic management plan and mitigation measures to control environmental emissions, and which should specify that the

construction entrance will be the existing entrance on Church Hill, for the approval of the planning authority, prior to the commencement of works.

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

Having regard to the nature and scale of the proposed development within the development boundary of Innishannon village on serviced lands, 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.

### 7.8. **Appropriate Assessment**

- 7.8.1. The site is located approx. 12km to the north of two European sites, Courtmacsharry Bay SAC and Courtmacsharry Bay SPA. There are no known hydrological links to the protected sites. Given the scale and nature of the development, the distances involved, that the site is located in an established urban area, on brownfield and serviced lands, it is considered that no appropriate assessment issues are likely to arise.

## 8.0 **Recommendation**

Having regard to the foregoing I recommend that permission for the above described development be **refused** for the following reasons and considerations subject to conditions.

## 9.0 **Reasons and Considerations**

1. The site is located within Ard Aoibhinn housing estate wherein the design and layout of the public open space provision, as permitted under Planning Reg. Ref. 99/5878, forms an integral component in the urban design of the estate. Having regard to the location of the site on one of principal sites designated, and required to be developed and maintained under this permission, as an area of public open space, it is considered that the proposed development would result in the loss of a valuable green space which fulfils an important recreational and amenity function within the estate, notwithstanding the proposal to provide an alternative area of open space at the northern

extremity which would be remote and poorly overlooked, and the fact that the designated area of open space has not yet been provided. The proposed development would, therefore, be contrary to the permission (99/5878) which governs the development of the estate, would result in a significant reduction in the amenities for the residents of the estate, would seriously injure the residential amenities of the area and would set an undesirable precedent for further development of a similar nature in the area, and would be contrary to the proper planning and development of the area.

2. Having regard to the prominently visible and elevated nature of the site, together with the steep topography of the surrounding area, to the proposed building height, finished floor levels, the uncertainty regarding the gradient of the road and to the proximity of the proposed houses to the public road, which would replace a landscaped buffer space, it is considered that the proposed development would result in an prominent and visually obtrusive feature which would be out of character with the established pattern of development in the area, notwithstanding the proposal to retain and augment the boundary screening. The proposed development would, therefore, seriously injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.

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**Mary Kennelly**  
**Senior Planning Inspector**

**11<sup>th</sup> January, 2021**