



An
Bord
Pleanála

Inspector's Report ABP-309163-21

Development	Proposed Public Realm masterplan and rehabilitation scheme for the existing estate external environment. An integrated residential development, set within the enhanced landscape proposals consisting of 21 houses.
Location	Fionnuisce, Doughuisce, Merlin Park, Galway
Planning Authority	Galway City Council
Planning Authority Reg. Ref.	20268
Applicant(s)	Martin Tolan
Type of Application	Permission
Planning Authority Decision	Refuse
Observers	(1) FFC Residents Association. (2) Desmond Curley.
Type of Appeal	First Party
Appellant(s)	Martin Tolan

Date of Site Inspection

14th April 2020

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 1.892 hectares, is located to the west of Galway City and within an existing housing development of Fionnusice. Fionnusice consists of a mix of two-storey dwellings and four-storey apartment blocks. The appeal site includes two open space areas and the service roads adjoining them but excludes any of the existing dwellings and apartment blocks within the existing housing development. Adjoining development includes existing housing development within Fionnusice on three sides to the north, south and east and with a block of two-storey dwellings in the middle of the site and two apartment blocks surrounded by the site. To the west of the site is Merlin Park Wood.

2.0 Proposed Development

- 2.1. Permission is sought for a proposed public realm masterplan and rehabilitation scheme for the existing estate external environment; including the restoration, improvement, and augmentation of existing and new hard and soft landscape provisions. Significant supplementary planting, enhanced facilitation of biodiversity, along with additional landscape connections to Merlin Park Woods and improved pedestrian permeability.

An integrated residential development, set within the enhanced landscaped proposal consisting of 21 number two-storey houses, The development will comprise of 2 no. blocks of terrace houses incorporating 6 no. 2 bed units, 1 no. block of terrace houses incorporating 5 no. 2 bed units, 1 no. block of terrace housing incorporating 8 no. 2 bed units and 1 no. block of semi-detached houses containing 2 no. 2 bed units. Access will be provided from the existing road network set within the proposed landscape rehabilitation masterplan. All associated external hard and soft landscape works, connections to existing services and associated general sites works.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on 8 reasons...

1. The proposed development is located in an area reserved under planning reference number 00/417, as communal open space, for the benefit of existing and future quantum, quality and functionality of the existing amenity space, which would be detrimental to the residential amenity of existing and future residents. The proposed development would be contrary to Policy 2.5 Outer Suburbs of the Council to ensure that sustainable neighbourhoods are places where housing, streets, open spaces and local facilities come together in a coherent, integrated and attractive form, and Section 11.3.1 (c) Amenity Open Space Provision in residential development which requires that all residential developments shall provide for communal recreation and amenity open space. The proposed development would erode the coherent and integrated layout of open space for the estate permitted under planning reference number 00/417, seriously injure existing residential amenities and consequently would be contrary to the proper planning and sustainable development of the area.

2. The site forms part of an area designated as open space in accordance with planning permission reference number 00/417. The proposed development would materially contravene Condition no. 2 and no. 7 of planning reference number 00/417 which specified that this site shall be developed as amenity open space in order to ensure that substantial open space independent of the buildings that can be beneficially used for the enjoyment of residents of the estate, was safeguarded and to maintain the residential amenity. The proposed development, by reason of loss of primary communal open space of recreational value within the estate would be contrary to the terms of this planning permission which given the overall development of the housing estate. The proposed development would, therefore, seriously injure the residential amenity of the estate and properties in the vicinity and be contrary to the proper planning and sustainable development of the area.

3. Table 4.2 Open spaces within the Green Network states that in general all residential open space lands above 0.2ha in residential areas are zoned RA: To provide for and protect recreation uses, open space, amenity uses and natural heritage. As the area of the site dedicated as communal residential open space is

approx. 0.4ha, the proposed development of this portion of the site for residential purposes would seriously conflict with its present residential open space use and would materially contravene the RA land use zoning objective of the City development Plan 2017-2023. The proposed development would contravene the lands use zoning objectives as set out in the City Development Plan for the use of particular areas for particular purposes and would therefore, by contrary to the proper planning and sustainable development of the area.

4. The proposed development involves the development of residential open space which has identified under Table 4.2 Open Spaces within the Green Network of the open spaces , natural resources and habitats , providing for general amenity, biodiversity, passive and active recreation in particular children's play. The proposed residential development would contravene Policy 4.1 Green Network to provide adequate recreation and amenity open space for the future development of the city, retain, extend and enhance opportunities for recreation within the green network for all members of the community, and enhance linkages and connectivity within the green network. The proposed development, would therefore, be contrary to the proper planning and sustainable development of the area.

5. It is considered that the proposed development would constitute overdevelopment of the site, would be significantly out of character with the established pattern and density of development in the area. The proposed development, if permitted would create an undesirable precedent for similar type development which would inhibit the creation of sustainable neighbourhoods as sought by Policy 2.5 Outer Suburbs of the City development plan 2017-2023, which seeks to ensure that sustainable neighbourhoods are places where housing, streets, open spaces and local facilities come together in a coherent, integrated and attractive form. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

6. The proposed development is considered to be substandard with regard to qualitative and quantitative standards, being so designed that it fails to achieve a

number of minimum development management standards set out in Section 11.3.1 Outer Suburbs of the City Development Plan 2017-2023, with particular regard to communal open space, overlooking and overshadowing issues. The proposed development would seriously injure the existing residential amenities and depreciate the value of property in the vicinity and would constitute a substandard form of residential development for future occupants. Hence, the proposed development is contrary to the policies and minimum development management standards as provided for in the Galway City Council development Plan 2017-2023 and consequential would be contrary to the proper planning and sustainable development of the area.

7. Having regard to the location of the proposed development in close proximity to Merlin Park Woods which is host to a number of protected species listed for protection under the EU Habitats Directive and the Wildlife Acts 1976-2000 and their key habitats, the applicant has failed to demonstrate the proposed development would not give rise to an adverse direct, indirect or secondary effect on protected species and therefore the proposed development would be contrary to Policy 4.2 Protected Spaces: Sites of European, National and Local Ecological Importance which states that it is the policy of the Council to protect and conserve rare and threatened flora and fauna and their key habitats, (wherever they occur) listed on Annex 1 and Annex IV of the EU Habitats Directive (92/43/EEC) and listed for protection under the Wildlife Acts 1976-2000. The proposed development would, therefore conflict with the policy of the Planning Authority and be contrary to the proper planning and sustainable development of the area.

8. The applicant has failed to demonstrate that they have sufficient estate or interest in the relevant land for the purposes of this application and the proposed development would be contrary to Section 180 of the Planning and Development Act 2000, (as amended), and procedure as set out under Section 11 of the Roads Act 1993 and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (03/12/20): The proposal to construct new dwellings in an area earmarked as public open space for an existing development was determined to be contrary to a number of Development Plan policies, contravention of conditions attached to a previous permission, detrimental to protected species and habitats, substandard in quality and overdevelopment of the site as well as it determined that the applicant had not demonstrated sufficient legal interest in the site. Refusal was recommended based the reason outlined above.

3.2.2. Other Technical Reports

Transportation department (02/12/20): Refusal recommended on the basis that the site is an open space area with plans in the process for its taking in charge.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

3.4.1 11 submission were received. The issues raised can be summarised as follows...

- The proposal would be contrary permission ref no. 00/417 and its conditions, negative impact on residential amenity of existing dwellings, loss of amenity space, out of character with existing development, will reduce level and quality of layout of public open space, ref to ABP 301929-18, deficiencies in car par parking provision by removing existing parking to facilitate the development, increased traffic within the development, adverse visual impact, excessive density of development, overlooking and overshadowing of existing development, there are current proposals to take the estate in charge.

4.0 Planning History

20/223: Permission refused for the relocation of 26 no. car parking spaces. Refused for three reasons including reduction in existing open space area, proximity to Merlin Park Woods and ecological impact.

19/121: Permission refused for 5 additional terraced houses. Refused based on five reasons including reduction in open space, excessive plot ratio, adverse visual amenity, substandard development, lack of accessibility to car parking area.

13/322: Permission granted for retention and omissions of 44 partially constructed apartments as previously approved under ref no. 05/508.

05/508: Permission granted for a four-storey residential development consisting of 60 no. apartments and associated site works. On a site to the north of the appeal site.

00/417: Permission granted for the construction of 140 residential units and associated site works. 112 units approved.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Galway City 2017-223.

The site is zoned R (Residential) with a stated objective 'to provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods'.

Table 4.2

Open spaces within the Green Network

Residential Open Space

Provides for general amenity, biodiversity, passive and active recreation in particular children's play. In general all open space lands above 0.2 hectares. (1/2 acre) in residential areas are zoned RA Recreation and Amenity.

5.2. Natural Heritage Designations

5.2.1

Galway Bay Complex SAC (Site Code 000268), approximately 1.2km to the south of the site.

Inner Galway Bay SPA (Site Code 004031), approximately 1.2km to the south of the site.

Lough Corrib SAC (Site Code 000297), approximately 4.3km to the south of the site.

5.3. EIA Screening

5.3.1 Having regard to nature and scale of the development, which is construction of 21 dwellings, enhancement works to existing open space areas and associated site works. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by Martin Tolan, Rosshill, Roscam, Galway, H91 XE1T.

- The refusal reason are repetitive and lack clarity to allow the appellant respond to such.

- The proposal provides for high quality housing on an underutilised part of the site and entails improvement and upgrade of existing amenity space and is consistent with the Core Strategy of the City Development Plan in relation to housing provision and the policies of the National Planning Framework.
- The proposal complies with development plan zoning, which is R (residential). The reliance of Table 4.2 to determine that the site is zoned Recreational and Amenity is incorrect with the use of the term in general suggesting that development on open space area above 0.2 hectares is not excluded or rational.
- In excess of 0.2 hectares of open space will remain as open space and be enhanced as part of the proposal. Less than 0.2 hectares of space is to be developed for housing and should not be classified as RA zoned lands. The Council have erred in their interpretation of zoning policy.
- The refusal reasons do not acknowledge the proposal to upgrade more than 6,000sqm of public open space within the entire development, which is above Development Plan standards. The requirement under Section 11.3.1(c) is 15% of gross site area. The proposal is to upgrade 6,160sqm of space which is 27% of the site area in excess of minimum requirements.
- The proposal is an appropriate scale of development with the two-storey dwellings similar to existing development in the estate. Meeting plot ratios standards and entailing a small increase in site coverage that would be negligible.
- The appellant considers that the Council have not demonstrated how the proposal would fail to meet qualitative and quantitative standards and reiterates that the proposal is satisfactory in the context of development control standards.
- The appellant has submitted a shadow analysis that demonstrate that the proposed development would have no adverse or significant impact in relation to adjoining amenities.

- The appellant has submitted ecological recommendation and states that the proposal would have no adverse or significant effects on any protected species or habitats in the vicinity.
- The applicant is the legal title holder of the subject lands and has sufficient legal interest to make the application.

6.2. Planning Authority Response

6.2.1 Response by Galway City Council.

- The response reiterates the concerns raised in the refusal reasons and note that the appeal submission has not raised any issues that would merit a change in attitude towards the proposed development. The Council request that permission be refused.

6.3. Observations

6.3.1 An observation has been received from the FFC Residents Associations.

- The applicant has left the estate unfinished and failed to take remedial action to rectify such deficiencies.
- The residents in conjunction with the Council have a long term strategy to get the estate taken in charge and this process began in 2016. It is noted that an area already taken in charge has been included in the overall site area calculations.
- The proposal entails loss of public open space designated for such under ref no. 00/417 and use as such by residents of the existing development. Condition no. 2 of the original permission requires omission of proposed apartments and use of the area for open space and condition no. 7 specified that the that the development of the existing open area should be in compliance with landscaping scheme, submitted on the 25/08/00.

- The proposed development would affect the character of the area would compromise the design and layout of open space and be contrary residential amenity.
- The parking requirement for the proposed development is 38.5 spaces as the development should be classified as an Established Suburb and not an Outer Suburb under the City development Plan. The parking provision proposed is substandard. The proposal has attempted to assimilate 22 existing spaces into the application and such are in use for existing residents.

6.3.2 An observation has been received from the Desmond Curley, 40 Fionnaisce, Merlin Woods, Galway.

- The proposal would remove public open space in a housing development and be injurious to residential amenity and contrary the Residential zoning. The proposal would also adversely affect the lands zoned recreational and Amenity to the south west due to the level of development proposed adjoining the wooded area.
- The appellant's argument about the level of open space fails to acknowledge the planning history of the site and the provision of open space as part of ref no. 00/417 and that the provision of open space is clearly provided for under condition no.s 2, 7 and 13 of ref no. 00/417. The proposal is contrary the conditions attached to the parent permission and a similar case is referred to where permission was refused (ABP-301929).
- The residents are at an advanced stage in the process of getting the roads and open space areas taken in charge.
- The proposals would result in a loss of residential amenity for existing residents due to a decrease in the level of open space available, loss of open space that has been available for a significant period of time and the layout of the proposed development with concerns regarding overlooking and overshadowing.

- The applicant has failed to demonstrate that the proposal will not have an adverse ecological impact on the wooded area and that a bat survey is required/ecological impact assessment.
- The issue of landownership is noted and the fact that a process has started to take in charge the common areas of the existing estate. The observer questions the applicant's right to reconfigure parking spaces.
- The residents in conjunction with the Council have long term strategy to get the estate taken in charge and this process began in 2016. It is noted that an area already taken in charge has been included in the overall site area calculations.
- The proposal entails loss of public open space designated for such under ref no. 00/417 and use as such by residents of the existing development. Condition no. 2 of the original permission requires omission of proposed apartments and use of the area for open space and condition no. 7 specified that the development of the existing open area should be in compliance with landscaping scheme, submitted on the 25/08/00.
- The proposed development would affect the character of the area would compromise the design and layout of open space and be contrary residential amenity.
- The parking requirement for the proposed development is 38.5 spaces as the development should be classified as an Established Suburb and not an Outer Suburb under the City Development Plan. The parking provision proposed is substandard. The proposal has attempted to assimilate 22 existing spaces into the application and such are in use for existing residents.

7.0 **Assessment**

- 7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Principle of the proposed development/development plan policy

Qualitative/quantitative standards

Adjoining Amenity

Ecological Impact

Other Issues

7.2. Principle of the proposed development:

7.2.1 The appeal site is made up of the roads and open space areas serving Fionnaisce housing development, which is made up of 112 residential units permitted under ref no. 00/417. The site includes two open space areas, the main one to the west of the site adjoining Merlin Park Woods and a smaller area to the east of the site. The proposal is to upgrade the existing public open space area with a landscaping plan and construct 21 no. dwellings on part of the larger space. The dwellings are proposed along the southern side and eastern side of the larger open space area.

7.2.2 The main issue relates to the proposal to construct new dwellings on an area of open space serving the existing housing development permitted under ref no. 00/417. There is a disagreement between the Council and the appellant regarding the zoning of the site and whether the proposal complies with land use zoning policy.

7.2.3 The appeal site is located within the functional area controlled by the Galway City Development Plan 2017-2023. The land use zoning map under said plan has the appeal site zoned as R (Residential) with a stated objective 'to provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods'. The Council refer to Table 4.2 of the City Development Plan concerning Open Spaces within the Green Network. This identifies the Open Space Type, Location and its primary purpose. In relation to Residential Open Space (type) and open space in residential areas occur throughout the city (location) the primary purpose of such is classified as "provides for general amenity, biodiversity, passive and active recreation in particular children's play. In general all open space lands above 0.2 hectares. (1/2 acre) in residential areas are zoned RA Recreation and Amenity".

7.2.4 I would be of the view that the policy under Section 4.2 relating to Open Space within the Green Network is clear in relation to open spaces within residential areas that “in general all open space lands above 0.2 hectares. (1/2 acre) in residential areas are zoned RA Recreation and Amenity”. Notwithstanding the use of the term in general, it is clear that this policy relates to existing open space areas within residential development above 0.2 hectares. I would consider that there could be no confusion that this classification would apply to the existing open space areas subject to this appeal, which were laid out and designed to provide open space for the existing housing development at this location. In this regard the site is zoned both Residential (the parts of the site corresponding to the internal service roads included within the site boundary) and Residential and Amenity (the two areas laid out and in use as public open space) and the proposal to construct new dwellings would be a material contravention of the Residential and Amenity zoning objective.

7.2.5 Table 4.2 Open spaces within the Green Network states that in general all residential open space lands above 0.2ha in residential areas are zoned RA: To provide for and protect recreation uses, open space, amenity uses and natural heritage. As the area of the site dedicated as communal residential open space is approx. 0.4ha, the proposed development of this portion of the site for residential purposes would seriously conflict with its present residential open space use and would materially contravene the RA land use zoning objective of the City Development Plan 2017-2023. The proposed development would contravene the lands use zoning objectives as set out in the City Development Plan for the use of particular areas for particular purposes and would therefore, be contrary to the proper planning and sustainable development of the area.

7.2.6 As stated above part of the site is zoned Residential (the area corresponding to the internal service roads included in the site), I would note that the proposal seeks to construct 21 dwellings on an area that has been designated as open space to serve a housing development permitted under ref no. 00/417. This is space that has been available to existing residents and there is an expectation that such a situation would

not be subject to change or reduction. The proposal would entail a significant reduction in the existing open space provision and much changed outlook for existing dwellings who are accustomed to an outlook onto open space. If the site is viewed as being zoned residential, I am of the view that the proposal would be seriously injurious to the residential amenities of existing residents due to the reduction and loss of public open space they would reasonably expected to have been permanently maintained as such. The proposal would therefore be contrary to the residential zoning objective which is “to provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods”.

7.2.7 The proposal entails plans to enhance the existing open space areas that remain with it noted that such have been neglected and poorly maintained due to historical development issues. I would note that the existing development is neglected in terms of the maintenance and landscaping of the existing open space area and any enhancement or improvement of such would be a welcome occurrence. The provision of enhancements to the existing open space area is not a justification to allow new dwellings to be constructed on an area of open space within an existing housing development and other measures should be implemented to improve the condition and maintenance of such. The use of this measure would set an undesirable precedent and does not deal with the inherent problem concerning the failure of the previous developer to provide open space areas that are properly maintained.

7.2.8 Permission was refused on the basis that the proposal would contravene Condition no. 2 and no. 7 of planning reference number 00/417 which specified that this site shall be developed as amenity open space in order to ensure that substantial open space independent of the buildings that can be beneficially used for the enjoyment of residents of the estate, was safeguarded and to maintain the residential amenity. I would consider that these conditions are quite clear in explicit regarding the function and use of the space in question as public open space and that an alteration of such would be contrary such conditions and set an undesirable precedent for other

residential developments. I consider that the proposed construction of 21 dwellings on the subject site would contravene materially conditions attached to an existing permission for development namely, conditions numbers 2 and 7 attached to the permission granted by Galway City Council under planning register reference number 00/417 which required that the subject site be used as designated open space to serve the housing development. The proposed development would set an undesirable precedent in terms of non-compliance with planning conditions and would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3. Quantitative/qualitative standards:

7.3.1 The proposal was regarded as being substandard in relation to qualitative and quantitative development control standards. In relation to open space provision of the first party appellant state that the level of open space being provided and the upgrades proposed to such were not adequately taken into account. The appellant states the 6,160sqm of public open space is provided and that such equates to 27% of the site area and is well in excess of the 15% standard under the Development Plan. The appellant also states that the gross site area of the existing housing development is 3.28 hectares, which has a requirement of 5,740sqm. The appellant is arguing that the level of public open space being retained is in excess of what would be required under Development Plan policy, which requires 15% of the site area. I would acknowledge that this is the case, however I consider there is an issue concerning the amenity of existing dwellings and land use zoning policy, which is outlined in other sections of this report.

7.3.2 The proposal consist of 21, two-storey, two bedroom dwellings in four blocks. Each dwelling is provided with a rear garden and the Development Plan requirement is not less than 50% of the gross floor area of the dwellings, which is met in all cases. In relation to car parking the requirement under the City Development Plan (Outer Suburbs) is for a number of options (Section 11.3.1(g)) including 2 on-site spaces per dwelling and 1 grouped visitor space per 3 dwellings , 1 on-site space per dwelling and 1 grouped visitor space per dwellings ,1.5 grouped spaces per dwelling

and 1 grouped visitor space per 3 dwellings , 3 spaces for dwellings over 200m2 and 1 grouped visitor space per 3 dwellings and 1 space for one bedroom residential dwellings and 1 grouped visitor per 3 dwellings. The requirement for Established Suburbs is as stated above except, 1 on-site per dwelling and 1 grouped visitor per 3 dwellings or, 1 space per dwelling if grouped. In this case it is proposed to install 33 additional car parking spaces (along the south east of the main open space area). The observers note that the requirement for the development should be 38.5 with the development being in the Established Suburbs and not the Outer Suburbs (requirement 33). The proposal provides for 33 additional car parking spaces and the proposed development provides for 21 dwellings. I am of the view that the provision of car parking is satisfactory.

7.3.2 The proposal meets the minimum development plan requirements as set out under the Development Management standards under the City Development Plan including public and private open space, plot ratio, internal dimensions and car parking.

7.4 Adjoining Amenity:

7.4.1 The proposal entails constructing dwellings on an open space area serving an existing residential development. When permission was granted under ref no. 00/417 for 112 units approved, this included open space areas that are clearly defined and have been in use as open space for a significant period of times. This is space that has been available to existing residents and there is an expectation that such a situation would not be subject to change or reduction. The proposal would entail a significant reduction in the existing open space provision and a much changed outlook for existing dwellings who are accustomed to an outlook onto open space. I am off the view that the proposal would be seriously injurious to the residential amenities of existing residents due to the reduction and loss of public open space that existing residents would reasonably expect to have been permanently maintained as such. The proposal would, therefore, be contrary to the proper planning and sustainable development of the area.

7.4.2 In relation to the issue of overlooking and overshadowing, I would be of the view that the proposed development would have no significant or adverse impact. The proposal is for two-storey dwellings, which would not be out of character of scale with existing dwellings. The dwellings proposed along the southern side of the open space area face onto the service road and are separated from the existing dwellings to the south by the existing service road. The relationship between the proposed and existing dwellings is a fairly conventional residential layout and the scale of the dwellings are similar to the existing dwellings to the south. The dwellings provided to the east of the open space area are two-storey and have a degree of separation from existing development to the east (four-storey apartments blocks) by the internal service road and the existing development to the north west (four-storey apartment blocks) by existing open space. The applicant submitted a shadow analysis that demonstrates the proposal would have no significant or adverse impact in relation to overshadowing.

7.4.3 The third party submissions during the application stage referred to increased traffic within the housing development. The existing housing development is serviced by internal services roads that are of a width and standard more than capable to deal with the level of traffic likely to be generated and the proposal will generate traffic residential in nature and not out of character with existing traffic generation at this location.

7.5 Ecological Impact:

7.5.1 The appeal site is adjacent Merlin Park Woods (to the west) and permission was refused on the basis that having regard to the location of the proposed development in close proximity to Merlin Park Woods which is host to a number of protected species listed for protection under the EU Habitats Directive and the Wildlife Acts 1976-2000 and their key habitats, the applicant has failed to demonstrate the proposed development would not give rise to an adverse direct, indirect or secondary effect on protected species and therefore the proposed development would be contrary to Policy 4.2 Protected Spaces: Sites of European, National and Local Ecological Importance which states that it is the policy of the Council to protect

and conserve rare and threatened flora and fauna and their key habitats, (wherever they occur) listed on Annex 1 and Annex IV of the EU Habitats Directive (92/43/EEC) and listed for protection under the Wildlife Acts 1976-2000. The proposed development would, therefore conflict with the policy of the Planning Authority and be contrary to the proper planning and sustainable development of the area.

7.5.2 Merlin Park Woods is not within the confines of designated Natura 2000 site.

Notwithstanding such it is an attractive wooded area that is the habitat for wildlife. An ecological report was submitted. This report highlights the fact that the proposal does not entail the loss of any habitat associated with wildlife including bats, birds and mammals with the site within the confines of an existing housing development. The report outlines a number of measures designed to ensure no impact on wildlife including provisions to prevent excessive light spillage from new lighting to protect bats, provision of rocket boxes to be located in a new line of trees adjoining the wooded area to enhance bat roosts. A bird box scheme is proposed to be provided within new and existing trees on site. In relation to mammals a survey is proposed of the site and adjacent woods to identify evidence of badgers or breeding locations other protected mammals with mitigation implemented to ensure no negative effects. It is proposed to incorporate a wildflower meadow in the landscaping of the open space areas.

7.5.3 The appeal site is within the confines of an existing housing development and is on zoned and serviced lands. The appeal site is already developed and consists of an open space area serving a residential development and associated service roads. The appeal site is adjacent Merlin Park Woods (to the south west of the site). This area has not been classified as an area of unique ecological importance and is not classified as a Natura 2000 site or a Natural Heritage Area. Notwithstanding such the adjacent woods is an attractive wooded area that is a wildlife habitat. I am satisfied that the proposed development is not out of character with the established use on site and that the additional development would have no significant and adverse impact on the Merlin Park Woods Area. I would consider that the ecological proposals put forward by the applicant would be welcome and subject to normal

construction management the proposed development would be satisfactory in the context of ecological impact.

7.6 Other Issues:

7.6.1 The proposal was refused on the basis that the applicant has not demonstrated sufficient legal interests in the site. I am of the view that this is not a planning matter and any dispute regarding ownership or control cannot be determined by the Board. I would consider there are a number of issues that merit refusal of permission and at this point can see no justification for refusal on the basis of landownership/control of lands.

8.0 **Appropriate Assessment**

8.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, 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.

9.0 **Recommendation**

9.1. I recommend refusal based on the following reasons.

10.0 **Reasons and Considerations**

1. The appeal site is zoned Residential with a stated objective 'to provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods'. Table 4.2 Open spaces within the Green Network states that in general all residential open space lands above 0.2ha in residential areas are zoned Recreation and Amenity (RA) with a stated objective 'to provide for and protect recreation uses, open space, amenity uses and natural heritage'. As the area

of the site dedicated as communal residential open space is approx. 0.4ha, the proposed development of this portion of the site for residential purposes would seriously conflict with its present residential open space use and would materially contravene the RA land use zoning objective of the City Development Plan 2017-2023. The proposed development would contravene the lands use zoning objectives as set out in the City Development Plan for the use of particular areas for particular purposes and would therefore, by contrary to the proper planning and sustainable development of the area.

2. Part of the site is zoned Residential with a stated objective 'to provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods'. The proposal to construct 21 dwellings on an area that has been designated as open space to serve a housing development permitted under ref no. 00/417 and laid out in such a manner when the site was developed would entail a significant reduction in the existing open space provision, a much changed outlook for existing dwellings who are accustomed to an outlook onto open space and would result in the loss of communal public open space which is actively used for recreational purposes. The proposed development would, therefore, seriously injure the residential amenities of the residents of Fionnusice residential estate and would, be contrary to the proper planning and sustainable development of the area.

3. It is considered that the proposed construction of 21 dwellings on the subject site would contravene materially conditions attached to an existing permission for development namely, conditions numbers 2 and 7 attached to the permission granted by Galway City Council under planning register reference number 00/417 which required that the subject site be used as designated open space to serve the housing development. The proposed development would set an undesirable precedent in terms of non-compliance with planning conditions and would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Planning Inspector

22nd April 2020