



An
Bord
Pleanála

Inspector's Report ABP-310018-21.

Development	Dwellinghouse and associated works.
Location	Glenanaar, Boreenmanna Road, Cork.
Planning Authority	Cork City Council .
Planning Authority Reg. Ref.	2139873.
Applicant	Helen Finucane.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant	Helen Finucane.
Observer	None.
Date of Site Inspection	12 June 2021.
Inspector	Mairead Kenny.

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1.0 Site Location and Description

- 1.1. The site is located in an inner suburban area in Cork city and comprises a vacant plot at the junction of the residential estate Glenanaar and the Boreenmanna Road. The dominant form of development in the area is two storey residential development. A number of infill schemes are also under construction including at a location to the south-east of the site.
- 1.2. The site is laid out and in use as open space. It is similar in use and appearance to other small pockets of open space at the entrance to Glenanaar. Further into the housing estate there are other small incidental public open space areas.
- 1.3. The site is bounded to the north by no. 1 Glenanaar. The subject site is elevated above the public road and no. 1 Glenanaar by over 0.5m. There is a low boundary wall separating the site from no. 1 Glenanaar. A utility box, which is likely to be associated with no. 1 Glenanaar is located within the defined site on the shared boundary wall. On site there are a few small trees and 2 no. Tree stumps which are remnants of recently felled trees.
- 1.4. To the west is a semi-detached house which gains access from the Boreenmanna Road. At the opposite side of the road at 12 Glenanaar is a detached two-storey house.
- 1.5. The stated site area is 0.02368 hectare.

2.0 Proposed Development

- 2.1. Permission is sought to develop a detached two-storey dwelling house and associated site works. The proposed house would face onto Glenanaar and have an access from the residential estate road.
- 2.2. The stated floor area of the proposed dwelling house is 131 m². The external finishes and fenestration are in keeping with the existing houses on the street and include a cream/yellow selected brick and russet roof tiles.
- 2.3. The application drawings indicate that the roof ridge of the proposed dwelling house would be in line with the house at no. 1 Glenanaar. The finished floor levels specified

is 12.5 m OD compared with a temporary benchmark shown on the main road carriageway of 12.2 m OD.

- 2.4. At the rear of the house the stated area of the garden is given as 91 m².
- 2.5. The application documentation includes a tree survey which identifies the trees on site as being approximately 20 – 35 years old and rates the trees as category B or C/U.
- 2.6. A certificate of exemption from the requirements of section 5 is submitted with the application.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for the reason summarised below:

- Would materially contravene the provisions of the development plan specifically objective 11.7(b) with regard to development on an open space which forms part of an executed planning permission and which site has been habitually used as a public open space by residents. The proposed development would seriously injure the residential amenities of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the planner's report are as follows:

- The subject site is zoned ZO14 public open space in relation to which objective 11.7 applies.
- The pre-application recommendation was that the development is not acceptable in principle.
- Objective 6.1 and other residential development standards are referenced.
- The site has been used as an area of open space since the estate was built and is an established area of open space within the housing estate.

- Objective 11.7 refers in relation to public open space and having regard to this it is recommended that permission be refused.
- Development contributions calculations are attached.

The Senior Planner concurs with the recommendation of the Senior Executive Planner.

3.2.2. Other Technical Reports

Drainage - no objection subject to conditions.

Parks – the site is zoned public open space and development is not acceptable for reasons of objective 11.7(a) and(b). Permission should be refused.

Environment (Waste Management and Control) - sets out standard conditions.

Urban Roads and Street Design - further information is recommended in relation to driveway entrance widths and other details.

Contributions Report – a total contribution in the amount of €3,456.49 applies.

3.3. Prescribed Bodies

Health and Safety Authority – the authority does not advise against the granting of planning permission.

3.4. Third Party Observations

The owners/occupiers of No.12 set out concerns relating to drainage, traffic, parking, green space, resource preservation, overdevelopment and timing of development with respect to the approved larger development in the area.

The owner of no. 5 objects to the proposed development on the grounds of the public open space zoning, daily use of the area by residents. It is stated that the requirements of the development plan in relation to infill proposals are not met as there will be no amenity if the development is granted, there would be no open space left in the estate at all if the permission is granted.

4.0 Planning History

The applicant submission references the development of the Glenanaar estate in three phases:

- Under TP 7521 permission was granted for 11 no. houses (no. 1-11 Glenanaar). The planning history file is stated to be missing.
- A single detached house (no. 12) was constructed in 1987.
- Under TP 90/16110 no. 14-19 were constructed in the early 1990s.

Pre planning reference 343/19 refers. The recommendation was that the proposal to build a dwelling on open space is contrary to the land-use zoning objective ZO 14 and is not acceptable in principle.

5.0 Policy Context

5.1. Development Plan

The provisions of the Cork City Development Plan 2015-2021 apply.

Map 7 – South Central Suburbs Objectives refers - The subject site is designated as Zone 14 – Public Open Space.

The objective of this zone is ‘to protect, retain and provide for recreational uses, open space and amenity facilities with a presumption against developing land zoned public open space for alternative purposes, including public open space within housing estates’.

Objective 11.7 Public Open Space

Objective 11.7a is to protect, retain, improve and provide for public open space for amenity and recreation use. There will be a presumption against development of land zoned public open space for alternative purposes.

Objective 11.7b - there would be as presumption against development on all open space and residential estates in the city, including any green area/public amenity area that formed part of an executed planning permission for development and was identified for the purpose of recreation/amenity open space, and also including land

which has been habitually used as public open space. Such land shall be protected for recreation, open space and amenity purposes.

5.2. **Natural Heritage Designations**

The nearby European sites include Cork Harbour SPA (Site Code 004030) and Great Island Channel cSAC (Site Code 001058).

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The main points of the appeal are summarised below:

- The subject lands have been zoned public open space without notice or reference to the landowner. The site was retained together with the site opposite at no. 12 by my father when the estate was built, to provide for future family use.
- It was always intended that a house mirroring the opposite house would be built. The site was not blocked off out of consideration for residents.
- There was no condition imposed when no. 12 was constructed requiring reservation of the subject site as public open space.
- The subject site is visually unbalanced.
- The council has never made any contact in relation to the zoning and has not provided compensation or undertaken a CPO.
- The additional unit would not negatively impact on adjoining residential units or the overall development.
- The site has not been maintained by the city council as public open space.
- The usability of the site as a public amenity is lacking and there has been antisocial behaviour. The site is not used by residents and only two of the 12 houses objected. Some residents have a preference for the house being developed.

- The trees were cut down by the city council without reference to the legal owners of the land. The parks department state now that this was done in error.
- The original open areas intended for use for amenity purposes or those outside the entrance to the estate. The area is well served with local parks.
- Off-street parking will be provided and there will be no impact on the current parking in the estate.

6.2. **Planning Authority Response**

No response received.

6.3. **Observations**

None.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1.1. I will structure my assessment of this case under two headings:

- Site zoning.
- Design, layout and other matters.

7.2. **Site zoning.**

7.2.1. The planning authority's decision to refuse is solely based on a material contravention of the zoning objective.

7.2.2. The site is zoned public open space, the objective of which is to protect, retain and provide for recreational uses, open space and amenity facilities with a presumption against developing land zoned public open space for alternative purposes. It is clearly stated that this includes public open space within housing estates.

Objective 11.7b further clarifies that the presumption against development relates to all open space in residential estates in the city, including any green area/public amenity area that formed part of an executed planning permission for development and was identified for the purpose of recreation/amenity open space, and also including land which has been habitually used as public open space.

- 7.2.3. The planning history of the lands is not clear, and it is not identified what the identified use of the site was under the original permission for the 11 no. houses which have been developed. The wording of the development plan however does not require that the lands were formally set out as open space. It also refers specifically to lands which have been habitually used as public open space.
- 7.2.4. I consider that it should be concluded that the land has been habitually used as public open space. It is laid out under grass and planted with trees. It is within a residential housing estate and is being maintained. It is not in my opinion relevant as to who does that maintenance or what is the nature of the use public open space. At the very least the land has functioned as open space for decades in terms of the visual amenity at the front of the estate. These are the only material issue when it comes to the zoning objective in my opinion.
- 7.2.5. Having concluded that the site has been habitually use as public open space it follows that the development of this site for residential purposes is a material contravention of the zoning objective. I agree with the general thrust of the decision of the planning authority that the proposed development materially contravenes the zoning objective.
- 7.2.6. If the Board agrees with my conclusion then I consider that it would be precluded from granting permission in the circumstance where the planning authority has refused permission unless one of the limited criteria set out under 37(2)(b) of the Act.

My comment in this regard are:

- The development would not be considered to be of strategic or national importance.
- There are no conflicting objectives or objectives which are not clearly stated.
- The development is not necessary to meet regional planning objectives or other obligations

- The pattern of development in the area is unaltered and no significant relevant permissions have been granted since the adoption of the development plan.

7.2.7. I note that the appellant has offered a range of comments relating to lack of consultation, suitability of the site for development, long term intentions, nature of the proposed development as a house for her own occupancy and the availability of ample open space outside the entrance to the park. These matters do not overcome the fact that the site zoning in the adopted development plan is for public open space.

7.2.8. I recommend that the Board uphold the decision of the planning authority.

7.3. Design, layout and other matters

7.3.1. The house design in terms of its external finishes, roof profile and height and fenestration are in keeping with the pattern of development in the area. I consider that the house design and its position on the site are acceptable.

7.3.2. I consider that subject to completion of suitable boundary walls the proposed development would not overlook, overshadow or otherwise unduly impact on the residential amenity of adjoining properties, including the single storey house to the rear.

7.3.3. I note the comments relating to anti-social behaviour. I do not consider that this is relevant to the Board's decision.

7.3.4. I note that there are comments in the third-party observations relating to the drainage in the area. If permission was granted the agreement with the planning authority on design would be appropriate.

7.3.5. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the likely emissions arising from the proposed development, the availability of public water and sewerage in the area, and distance to the nearest European sites, I am satisfied that 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 permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

The site is located in an area zoned Zone 14 – Public Open Space in the current development plan for the area. The Board considers that the proposed development would materially contravene the zoning objective, as set out in this plan. The Board pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Mairead Kenny

Senior Planning Inspector

14 June 2021