



An  
Bord  
Pleanála

# Inspector's Report

## ABP-314809-22

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<b>Development</b>	House with associated site development works.
<b>Location</b>	Springfields, Maryborough Downs, Maryborough Hills, Douglas, Co. Cork
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	2241272
<b>Applicant(s)</b>	Dr. Dawar and Aisha Siddiqi
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Refused
<b>Type of Appeal</b>	First Party Appeal
<b>Appellant(s)</b>	Dr. Dawar and Aisha Siddiqi
<b>Observer(s)</b>	Mark and Alethea Mansfield
<b>Date of Site Inspection</b>	19 <sup>th</sup> April 2023
<b>Inspector</b>	Susan Clarke

## 1.0 Site Location and Description

- 1.1. The site, measuring 0.0977ha, is an open space area located at Springfields, within the Maryborough Downs development off Maryborough Hill, next to the Fingerpost roundabout. It is located southeast of Douglas village and approx. 3.5km south of the city centre. The main Carrigaline road embankment bounds the site to the northwest. There is a detached, two storey dwelling ('Winterfell') located to the northeast, with Douglas Garda Station located further beyond. A residential complex of apartments/duplex units (Maryborough Green) is located to the southeast of the site. I understand from the site's planning history that the Maryborough Downs development is in private ownership.
- 1.2. The site entrance is located at the end of the cul-de-sac, to the front of the duplexes. There are designated car parking spaces delineated on the ground, however there are no other parking controls within the estate. The ground levels fall away steeply from the adjacent estate road to the western and northern boundaries which abuts the public road embankment. There is a number of mature trees along the northern and western boundaries of the site. At the time of my site visit, the south-eastern part of the site was mowed, while the balance was largely overgrown and partially fenced off.
- 1.3. The context of the subject site is presented in the appendix to this report which includes, maps and a number of photographs taken on the day of my site inspection.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a split-level dwelling (304 sq m, 4-bedroomed), site entrance and all associated site works. The dwelling includes a dormer window and terrace on its southwestern elevation and a first floor level terrace along part of its northwestern elevation. The dwelling will be finished in a mix of smooth render and brick with blue/black concrete tiles. Provision is made for car parking to the front of the dwelling, while private amenity space is proposed to the rear of the dwelling. The dwelling will be assessed off Maryborough Downs. It is proposed that the house will be serviced by the public infrastructure in terms of water supply, wastewater and surface water disposal.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Notification of the Decision to Refuse Permission for the proposed development for one reason issued on 12<sup>th</sup> September 2022 as follows:

*The proposed development would be located on a site which currently forms part of a green area of an executed planning permission for a residential development. The proposed development, by reason of its location, would be contrary to Objective 6.18 and section ZO1.7 of the City Development Plan 2022-2028, which states that there will be a presumption against development on all open space in residential estates, including any green area or public amenity area that formed part of an executed planning permission, 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

Basis of Local Authority's decision.

The Assistant Planner's Report (dated 9<sup>th</sup> September 2022) highlights that the subject site formed part of a larger site for which planning permission was permitted (01/1391) in 2001 for an apartments/duplexes scheme. The subject site was reserved as an open space/landscaped area as part of the said permission<sup>1</sup>. The Officer states that there are conditions attached to the subject permission curtailing further development of the area and requiring a landscaping plan to be submitted and agreed with the planning authority.

The Officer highlights that there is very little alternative useable public open space within the Maryborough Downs/Maryborough Green residential development outside of this area and subject to the requisite landscaping and maintenance the open space

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<sup>1</sup> See attached a copy of the *Order* (dated 17<sup>th</sup> May 2001), *Planner's Report* (15<sup>th</sup> May 2001), Chief Planning Officer's Report (dated 8<sup>th</sup> May 2000), *Location Map* (Dwg. No. 6428-8 & 6428-9) and a "*Site at Fingerpost Roundabout Douglas, Cork*" (Dwg. No. 00 014 01).

could be improved and provide a useable amenity space for residents. The Officer stated that to permit further housing development on the site would adversely affect the established residential amenity and would be contrary to Objective ZO 1.

In addition, the Officer raises concerns regarding the volume of excavation of the site that would be required for the development and its relation to the neighbouring property. Furthermore, the Officer notes the concerns of the Landscape Officer in relation to potential impacts on nearby trees and overlooking of neighbouring property. The report concludes by recommending that permission is refused as per the reason outlined above.

The Acting Senior Executive Planner and Senior Planner concurred with the Executive Planner's recommendation for permission to be refused.

#### 3.2.2. Other Technical Reports

- Parks (7<sup>th</sup> September 2022): Recommends that an arboricultural survey and report be prepared.
- Contributions Report (5<sup>th</sup> September 2022): No objection subject to condition.
- Area Engineer (24<sup>th</sup> August 2022): Highlights that Maryborough Downs estate is a private estate not taken in charge and recommends that the Applicant provide relevant consent to access the site and connect to the services as proposed.
- Drainage (22<sup>nd</sup> August 2022): No objection subject to condition.
- Environment (27<sup>th</sup> July 2022): No objection subject to condition.

#### 3.3. Prescribed Bodies

- Irish Water (10<sup>th</sup> August 2022): No objection subject to condition.

#### 3.4. Third Party Observations

A number of Third-Party Observations were submitted to the Local Authority in respect of the proposed development. In short, a number of the Observations support the principle of developing the site, whilst others raise concerns in relation to:

- Pressure on local services.
- Additional traffic in the area.
- Contrary to previous planning permission on site and the site's land use zoning.
- No play or useable open space area provided.
- Negative impact on local biodiversity.
- Excavation of the site to facilitate the proposal.
- Traffic safety and parking.
- Overlooking, loss of sunlight and impact on residential amenity.
- Negative impacts (noise, dust, run-off of soil and building materials) during construction.

## 4.0 Planning History

### Subject Site

**CCC Reg. Ref. 01/1391:** Permission granted in June 2001 for the construction of six apartments and eight duplex units at The Fingerpost, Maryborough Hill, subject to 22 No. conditions.

A number of documents relating to this file were available on the Board file ABP Ref. PL04.220735 including *inter alia* a copy of the *Order* (dated 17<sup>th</sup> May 2001), *Planner's Report* (15<sup>th</sup> May 2001), Chief Planning Officer's Report (dated 8<sup>th</sup> May 2000), *Location Map* (Dwg. No. 6428-8 & 6428-9) and a "*Site at Fingerpost Roundabout Douglas, Cork*" (Dwg. No. 00 014 01). For ease of reference, they have been copied onto the file for this subject case.

The Chief Planning Officer report (dated 8<sup>th</sup> May 2000) stated *inter alia*: "*Grading and landscaping of the site to ensure the development sits well into the hillside without obvious scarring through cut-and-fill is important and I have attached a condition to this effect.*"

Condition No. 1 attached to the Decision requires "*No further development shall be carried out on overall site, as per the site location map submitted to the Planning Authority 20/03/01, for a period of 5 years from the date of Grant of this Permission.*"

*Before development commences provision to this effect shall be embodied in an Agreement between the landowner and his/her heirs, assigns, and executors and the Planning Authority pursuant to Section 38 of the Local Government (Planning and Development) Act, 1963. Reason: To maintain the density of development at a level consistent with the amenities of the area.”*

Condition No. 2 required that a comprehensive landscaping plan be submitted and agreed with the Planning Authority prior to the commencement of the development.

Condition No. 3 required that all planting agreed under Condition No. 2 be carried out within 12 months of the commencement of the development.

**CCC. Reg. Ref. 06/8149; ABP Ref. PL04.220735:** Planning permission refused in June 2007 for the construction of two dwellings and associated garages for two reasons:

1. *Having regard to the location of **the site substantially within an area zoned as open space** in the current Cork County Development Plan, it is considered that the proposed development would conflict with the provisions of the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *Having regard to **the location of the proposed development on an established open space permitted with the existing residential scheme**, (planning register reference number 01/1391), it is considered that the proposed development would seriously injure the residential amenities of the area and of property in the vicinity and would **contravene the permission granted under planning register reference number 01/1391**. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

**CCC. Reg. Ref. TP18/4961:** Application withdrawn for the construction of two detached dwellings in 2018.

#### **Neighbouring Site - Winterfell**

The site formed part of the CCC Reg. Ref. TP01/1391 development.

**CCC. Reg. Ref. 08/8167:** Planning permission granted in 2008 for a two and a half storey dwelling located to the north of the subject site. The Planner's Report (dated

18<sup>th</sup> September 2008) available on the Local Authority's website recommends that permission be refused for the proposal having regard to CCC Reg. Ref. TP01/1391 and the reservation of the site as open space under said permission. However, a Supplementary Planner's Report (dated 10<sup>th</sup> November 2008), which was prepared on foot of a request for further information, recommends conditions to be attached to a grant of permission, should permission be granted. An extension of duration of permission was granted in February 2013 (Reg. Ref. 13/4051), extending the life of this permission to 2018.

**CCC. Reg. Ref. 146019:** Planning permission granted in 2015 for a two and a half storey dwelling located to the north of the subject site. This permission effectively supercedes CCC. Reg. Ref. 08/8167 (Reg. Ref. 13/4051).

## 5.0 Policy Context

### 5.1. National Planning Framework Project Ireland 2040, 2018 (NPF)

The NPF identifies Cork as one of the country's five cities and a key location for future growth. Relevant to the appeal include national policy objectives:

- NPO 3b: Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints;
- NPO 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location; and
- NPO 35: Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

### 5.2. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009)

These Guidelines promote higher densities in appropriate locations. A number of urban design criteria are set out, for the consideration of planning applications and appeals. Increased densities are to be encouraged on residentially zoned lands,

particularly city and town centres, significant 'brownfield' sites within city and town centres, close to public transport corridors, infill development at inner suburban locations, institutional lands and outer suburban/greenfield sites. Higher densities must be accompanied in all cases by high qualitative standards of design and layout. Quantitative and qualitative standards for public open space are recommended. Appendix A of the document sets out guidance for measuring residential density.

### 5.3. **Cork City Development Plan 2022-2028**

#### 5.3.1. **Land Use Zoning**

5.3.2. The site is subject to land use zoning ZO 01 – “Sustainable Residential Neighbourhoods”, which has the objective “*to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses*”. Section 12.24 of the Development Plan states that the vision for sustainable residential development in Cork City is one of sustainable neighbourhoods where a range of accommodation, open space, local services and community facilities are within easy reach of residents. Development within this zone should generally respect the character and scale of the neighbourhood. Development that does not support the primary objective of this zone will be resisted.

5.3.3. Section ZO 1.7 states: *Many green areas of open space in residential estates in Cork City are included in this zone. There will be a presumption against development on all open space in residential estates including any green area or public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation or amenity open space, including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes.* Section 12.11 reiterates this statement. Furthermore, Objective 6.18b (Public Open Space) states:

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



#### 5.4. **New Residential Development**

##### 5.4.1. Section 11.139 Infill Development states:

*Adaptation of existing housing and re-using upper floors, infill development will be encouraged within Cork City. New infill development shall respect the height and massing of existing residential units. Infill development shall enhance the physical character of the area by employing similar or complementary architectural language and adopting typical features (e.g. boundary walls, pillars, gates / gateways, trees, landscaping, fencing, or railings).*

##### 5.4.2. Section 11.66 sets out that when assessing proposals for new residential development a broad range of issues will be assessed, including: (1) design quality, (2) site features and context, (3) residential density, (4) building height, (5) residential mix, (6) existing neighbourhood facilities and the need for additional facilities, (7) integration with the surrounding environment in terms of built form and the provision of walking / cycling permeability, (8) transport and accessibility, (9) residential amenity of scheme proposed, (10) impacts on residential amenity of surrounding areas, (11) utilities provision, (12) waste management.

##### 5.4.3. Objective 3.9 Infill Development – support the development of small sites for new housing supply whilst still ensuring high standards of residential amenity for existing adjoining homes.

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

##### 5.5.1. The nearest Natura 2000 European Site to the appeal site is Cork Harbour SPA (Site Code: 004030), c. 550m north of the site.

#### 5.6. **EIA Screening**

##### 5.6.1. Having regard to the nature and scale of the proposed development, comprising the construction of one residential dwelling in a suburban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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 was lodged to the Board on 10<sup>th</sup> October 2022 opposing the Local Authority's decision. The grounds of appeal can be summarised as follows:

- An overview of the site and neighbouring site's (Winterfell) planning history is outlined.
- Two precedent case studies are highlighted whereby the Board granted planning permission for development on open space areas: ABP Reg. Ref. 307530 and 307457.
- The site is not heavily protected as an amenity area. There is no history of this area being landscaped or of value to the local residents beyond that for visual purposes. Its useability is severely curtailed by the fact that it is not in public use with no safe and easy public access to it. The visual amenity can be maintained to some degree by retention of existing mature trees on site and by additional tree planting around the boundary of the appeal site.
- The proposal comprises a single proposed dwelling and provides ample car parking area, potentially to accommodate 3 or 4 cars, which is considered appropriate to what is proposed and is in accordance with car parking standards.
- It is inconceivable that a single dwelling, comprising 4no. bedrooms, would have any effect on local infrastructure and services or traffic levels. It could not be considered unacceptable or excessive in terms of site coverage.
- The loss of biodiversity and habitats has been minimised with only the core part of the appeal site utilised for development.
- There is no indication, much less any evidence presented, that there would be any sunlight impact on any adjacent existing dwelling.
- The application should have been determined with respect to the Ballincollig Carrigaline Municipal District Local Area Plan 2017, which zones the site as 'Existing Built Up Area'. Section 34(2)(a)(i) of the Planning and Development Act 2000, as amended, which provides that applications should be assessed having regard to the development plan. It does not provide for regard being had to a Draft. The site was

zoned 'Existing Built Up Area' in the 2017 LAP where the following objective was in place: Objective ZU 3-1 that 'Existing Built Up Areas' should '*Normally encourage through the Local Area Plan's development that supports in general the primary land use of the surrounding existing built up area. Development that does not support, or threatens the vitality or integrity of the primary use of these existing built-up areas will be resisted*'. The statutory development plan in place at the time that the application was lodged (application lodgement date of 18th July and validated on 22nd July) was the Cork County Development Plan 2014 and the Ballincollig and Carrigaline Municipal District Local Area Plan 2017. The then emerging City Development Plan was not put into effect until 8th August and as such it was technically subject to change by the Department and/or Minister of the Environment. Therefore, it still constituted a draft plan.

- The appeal site is characterised as open land not useable open space failing to meaningfully serve the development zoned existing built-up area and the permission of 2008 sets the precedent extended by the 2013 grant of permission and followed by the 2014 permission. The previous permissions show a strong precedence for the current appeal to be approved.
- There were no objections from the Roads Section from the City Council. There are trees proposed along the boundary to the northeast with the existing boundaries on the site to be retained in their entirety.
- There are many other areas of open and recreational space in close proximity to the site.
- It is not known if the area subject to appeal was ever landscaped or in compliance to the parent permission at any stage. It is unclear that the local authority, either City or County Council, ever threatened enforcement proceedings in respect of non compliance with the previous relevant planning permissions.

## 6.2. Planning Authority Response

No comments on file.

### 6.3. Observations

6.3.1. Mark & Alethea Mansfield of Winterfell, Maryborough Green, Maryborough Hill, submitted an Observation to the Board on 1<sup>st</sup> November 2022. The key points raised can be summarized as follows:

- The subject site is within a larger area zoned ZO-01 Sustainable Residential Neighbourhoods. Furthermore, paragraph Z01.7 states *"There will be a presumption against development on all open space in residential estates including any green area or public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation or amenity open space, including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes."*
- Until the recent sale and the submission of application ref: 22/41272, the site remained open to the residents of the estate, there was no fencing or restriction on access erected on the designated estate amenity space.
- The adjoining residents have, for a number of years, maintained a small area directly adjacent to the car parking area for sitting out in the summer. Children and adults have been free to roam the entire site since the development was completed and occupied.
- The verge and site have not been landscaped in accordance with the previous planning consent for Maryborough Downs and the small raised area was as a result of the site works which created the adjacent car parking area. The fall across the site historically can be ascertained by viewing the existing hedgerow and boundary at the closed end of the car park. There has never been a restriction on residents using the area, or indeed maintaining the front portion.
- Robustly object to the assertion that there is adequate open space in the wider area as referenced by the Applicant for use by the residents of the estate and therefore the designated amenity space is not required. These are not residential amenity spaces serving a specific housing development but public areas.
- It is unacceptable that the estate's only accessible residential amenity space was never landscaped or fully completed.

- The amenity area has been continuously used and accessible by residents since the estate was constructed (and was especially of demonstrable benefit during Covid).
- The case Ref. Reg. 307530 referenced by the Applicant is a considerably different situation to the subject site, which is the main designated open space for the Maryborough Downs estate. The fact that the developer did not fulfil his obligations should not mean that residents lose their designated amenity area.
- The application also proposes access to the existing water, stormwater and sewage infrastructure within the estate, including a gravity feed/pumped system. No evidence of consultation with the Area Engineer to confirm such connections are feasible has been submitted.
- Concern that the proposed dwelling will affect the continued environmental sustainability of Winterfell.
- It is possible that this large dwelling would not be possible to construct at the elevations proposed. Any changes to the proposed height of the dwelling, which would require further consent or, at worst a retention permission, would result in further loss of residential amenity and privacy at the Mansfield dwelling.
- Visual amenity will be significantly reduced for surrounding residents.
- While there may be adequate parking space on site for up to three cars, the manoeuvring required is likely to lead to visitors, delivery vehicles, etc., to prefer to park outside the site boundaries and use the car parking spaces already provided for the Maryborough Downs estate residents and visitors.
- The appeal makes no commentary regarding potential conflict between vehicles and pedestrian safety along the entrance to the site.
- A landscaping plan has not been submitted.
- The character of the area will be less open, and longer views will be lost, not to say the visual impact of the loss of open amenity space. The more enclosed nature of the car park area is likely to increase reflected noise from vehicles.
- The same concerns raised in relation to this application were also raised in relation to the 2018 application; primarily loss of open space.
- The proposal will overlook Winterfell.

- The amenity area is overlooked by adjoining residents, and there has been no anti-social activity on site.
- The owners of this site (both past and present) have repeatedly attempted to use the lack of compliance with planning conditions resulting in the required landscaping of the open space not been completed as a reason for development to now be permitted on the designated amenity area for the estate.

#### 6.4. Further Responses

None.

### 7.0 Assessment

Having examined the application details and all other documentation on file, inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues on this appeal are as follows:

- Principle of Proposed Development, and
- Impact on Neighbouring Residential Properties.

#### 7.1. Principle of Development

- 7.1.1. As outlined above, the Local Authority refused planning permission for the proposed development as it would be located on a site which currently forms part of a green area of an executed planning permission for a residential development (Reg. Ref. 01/1391) and as such would be contrary to Objective 6.18 and section ZO1.7 of the City Development Plan 2022-2028.

#### **Applicable Planning Policy**

- 7.1.2. The Appellant argues that the proposed development should have been determined in accordance with the Cork County Development Plan 2014 and the Ballincollig and Carrigaline Municipal District Local Area Plan 2017, as the current City Development Plan (2022-2028) was in draft format at the time the Local Authority issued its Notification of Decision to Refuse in respect of the proposal. The planning application was lodged on 18<sup>th</sup> July 2022 and determined by the Local Authority on 12<sup>th</sup> September 2022. The City Development Plan 2022-2028 was adopted on 10<sup>th</sup> June

2022. In my opinion, it is irrelevant that the Plan was “*technically subject to change by the Department and/or Minister of the Environment*”, as it took effect on 8<sup>th</sup> August 2022. This Plan now supersedes the Cork County Development Plan 2014 and the Ballincollig and Carrigaline Municipal District Local Area Plan 2017. As such, I am satisfied that the Local Authority’s assessment and determination are in accordance with the relevant statutory local plan. This is somewhat a moot point however, as the proposed development is now before the Board for determination. As highlighted by the Appellant, Section 34(2)(a)(i) of the Planning and Development Act 2000, as amended, provides that applications should be assessed having regard to the development plan, and the relevant statutory development plan in this instance is the Cork City Development Plan 2022-2028.

### **Public Open Space Provision**

- 7.1.3. The proposed development seeks to provide for a split-level dwelling within an established residential area, Maryborough Downs. The subject site is zoned ZO 01 – “Sustainable Residential Neighbourhoods”, which has the objective “*to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses*”. Under this land use zoning objective residential is listed as a permitted in principle use. However, as outlined in Section 4.0 above, the site formed part of a larger site relating to the development of apartments and duplex units in Maryborough Downs, and Objective 6.18b (Public Open Space) of the Development Plan states:

*There will be presumption against development on all open space in residential estates in the city, including any green area / public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation / amenity open space, and also including land which has been habitually used as public open space. Such lands shall be protected.*

- 7.1.4. Having reviewed the submissions and Observation on file and the First-Party Appeal, there are clearly conflicting views with regards to the usability of the subject site as an open space area. I note from my site visit that it is the only available green space within the estate that could be used for amenity purposes, notwithstanding its topography and current condition. Whilst there are other public open spaces in the wider area as highlighted by the Appellant (Independence Park, Douglas Community Centre, and

Ballybrack Woods), I do not consider that these compensate for the loss/omission of an open space area to service the Maryborough Down development, notwithstanding its current condition. However, I highlight that issues relating to compliance with permissions and potential unauthorised development are not matters for the Board to adjudicate, and as such in my opinion, need not concern the Board for the purposes of this Appeal.

7.1.5. I concur with the Observer that the two cases referenced by the Appellant as precedents are not relevant to the subject case. Notwithstanding this, even if the cases were similar, I highlight that each case is assessed on its own merits. In short, in terms of Reg. Ref. 307457, the Board considered that the said development would not result in a lack of public open space for the adjoining permitted development and stated that the previous temporary use of the site for public open space provision for the existing residents of the adjoining development was not a justification for refusal. The Order stated *“the Board did not consider it appropriate to delay the delivery of housing on residentially zoned lands to provide such ‘temporary’ public open space for a distinct and separate residential development in the context of the wide variety of open space and other amenities in the wider area and having regard to national policy objectives regarding housing delivery and the promotion of compact growth, densification and sustainable development”*. The subject development only provides for one dwelling and there are no other public open space areas within the Maryborough Downs estate, as such, in my view, it is not comparable to this case. Similarly, in terms of Reg. Ref. 307530, I note from review of the Inspector’s Report that the said site was not one of the main open space areas, and as such is not comparable to this case, whereby there is only one open space area (i.e. the subject site) available to residents.

7.1.6. I reiterate that both the Local Authority and An Bord Pleanála refused permission for the development of two detached dwellings and garages on the site under Reg. Ref. 06/8149; ABP Ref. PL04.220735. I concur with the Inspector’s assessment of the previous application, who stated: *“The conditions retaining this area free of development clearly had a long term or indefinite intent in that further conditions required that the area be landscaped.”* There are no new circumstances or grounds to merit a change in attitude towards the redevelopment of the subject site, which formed part of a larger residential development, that would justify contravening Objective 6.18b. Whilst I acknowledge national and local policy for increased housing, the



proposal will only result in the provision of one dwelling. I do not consider that this counterbalances the loss of the only public open space area within the Maryborough Downs estate. As such, I consider that the Local Authority's reason for refusal still stands, and I recommend that that refusal is upheld.

## **7.2. Impact on Neighbouring Residential Properties**

- 7.2.1. Mark & Alethea Mansfield's Observation raises a number of concerns in relation to the potential impact from the proposal on residential amenity in the estate and in particular on Winterfell, the detached dwelling located to the northeast of the site (see Photo 3 attached to this Report).
- 7.2.2. The proposed dwelling will be finished in a mix of smooth render and brick with blue/black concrete tiles and as such they will be in keeping with the character of the area and not cause any adverse visual impacts. I note the concerns raised in relation to the omission of a landscaping plan, however should the Board grant permission for the proposal, I consider that this matter could be dealt with by way of condition. The proposed split level dwelling is setback in excess of 13m from Winterfell and as such, I do not consider that there would be any overbearing impacts from the proposal on the neighbouring property, which itself sits on a large plot. In terms of overlooking, I note that there are two windows proposed along the northeast elevation facing in the direction of Winterfell. I am satisfied that subject to condition, including the provision of opaque glazing and the submission of a detailed landscaping plan, any overlooking could be mitigated to an acceptable level that would not adversely impact the residential amenity of Winterfell.
- 7.2.3. Whilst I acknowledge the Observer's statements in relation to the energy efficiency of Winterfell, having regard to the separation distance between the proposed development and Winterfell, I am satisfied that no undue overshadowing would occur to the neighbouring property that would adversely impact its amenity. I highlight that Winterfell, a detached property, benefits from significant open space on all sides. Furthermore, I am satisfied that the proposed development will not alter the quantum of daylight to such a significant degree that it would adversely affect amenities enjoyed by the occupants of neighbouring dwellings.
- 7.2.4. Having regard to the size and nature of the proposal, I do not consider that it is likely that significant noise levels would occur from the proposal. The proposal does not

include any features that would be of concern regarding security or anti-social behaviour. I consider that any construction disturbance impacts on adjoining properties would be only temporary and are inevitable and unavoidable aspects associated with urban/suburban development. I am satisfied that this matter could be satisfactorily agreed by conditions requiring the submission of construction management proposals to address any impacts, including potential traffic impacts from construction activities. The proposed development includes for off-street car parking and as such I am satisfied having regard to the size and nature of the proposal that it will not result in significant overspill in the area or represent a traffic hazard. Having regard to the size and nature of the proposal, I do not consider it likely that the dwelling would negatively impact on local services in terms of water supply and disposal of stormwater and foul water. These matters could be addressed by way of a condition attached to a positive decision. I note that the Local Authority's Drainage Department had no objection to the proposal, subject to condition. The Area Engineer highlighted that Maryborough Downs estate is a private estate not taken in charge and recommended that the Applicant provide relevant consent to access the site and connect to the services as proposed. In this regard, I note that Section 34(13) of the Planning and Development Acts (as amended), which states: *A person shall not be entitled solely by reason of a permission under this section to carry out any development.*" As such, should the Board be minded to grant permission for the development, it is the Applicant's responsibility to ensure sufficient legal interest exists to implement the permission.

- 7.2.5. In conclusion, I do not consider that the proposed development would adversely impact the area's amenity, save that the only open space area for existing residents living in the estate would be lost, which as outlined above, in my opinion, would be contrary to Objective 6.18b and to the proper planning and sustainable development of the area.

## **8.0 Appropriate Assessment**

- 8.1.1. Having regard to the nature and scale of the proposed development in an established suburban area on serviced land, I do not consider that the proposal would be likely to significantly impact the qualifying interests of the European Sites during either the construction or operational phases of development. As such, I consider that no

Appropriate Assessment issues arise. In conclusion, I do not consider 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

I recommend that planning permission be refused for the reasons outlined below.

## 10.0 Reasons and Considerations

The proposed development would be located on a site which currently forms part of a green area of an executed planning permission (CCC Reg. Ref. 01/1391) for a residential development. The proposed development, by reason of its location, would be contrary to Objective 6.18 and section ZO1.7 of the Cork City Development Plan 2022-2028, which states that there will be a presumption against development on all open space in residential estates, including any green area or public amenity area that formed part of an executed planning permission, and would therefore be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Susan Clarke  
Senior Planning Inspector

17<sup>th</sup> May 2023