



An
Bord
Pleanála

Inspector's Report ABP-315726-23

Development	Community Recreational Area and associated site development works.
Location	Pinewood Estate, Park, Killarney, Co. Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	22/1060.
Applicant(s)	Pinewood Residents Association.
Type of Application	Permission.
Planning Authority Decision	Grant Permission (5no. conditions).
Type of Appeal	Third Party.
Appellant(s)	Mary Mahony. Pat Fleming and Others.
Observer(s)	None.
Date of Site Inspection	28 th April, 2023.
Inspector	Aiden O'Neill.

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1.0 Site Location and Description

- 1.1. The proposed development site is an existing hardstanding area, formerly a basketball court, of c. 0.0786ha in Pinewood Estate, Park, Killarney, Co. Kerry.
- 1.2. The proposed development site is centrally located in the 1970's constructed Pinewood Estate at the southern end of a relatively large area of public open space and is accessible by footpath. It is bound by the side boundary wall (between c.0.5-c.1m in height) of the two-storey 150 Pinewood Estate to the east; by the rear boundary walls (c.1-c.1.25m in height) of 2no. two-storey detached dwellings to the south (Lochrann and Mhuire Linn) which front onto Park Road (R876); by the side wall (c. 0.5m in height) of the single-storey 80 Pinewood Estate to the west (the proposed development is located c. 6.2m from this boundary); and by public open space to the north.
- 1.3. All that remains of the former basketball court is the existing hardstanding area.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a Community Recreational Area to include a multi-use games area (MUGA) with 2no. goal ends and basketball hoops, outdoor exercise area, erection of 3.0m high fencing, associated pedestrian access and ancillary site works at Pinewood Estate, Park, Killarney, Co. Kerry.
- 2.2. The proposed development will include:
 - A multi-use games area (c.28.1m x c.17.5m) to accommodate both basketball and 5 a-side soccer, with 2no. in-built goals and basketball hoops, with a new tarmac finish, surrounded by a 3.0m high green powder coated wire mesh fence to the north and west, with 2no. lockable access gates.
 - An adjoining outdoor exercise area (c.6.2m x c.17.5m), with 2.4m high green powder coated twin wire mesh fencing to the north, with 1no. lockable access gate.
 - Ancillary works to include: removal of excess tarmac surface and reinstate with topsoil; proposed 1.8m wide tarmac footpath; surface water diverted via gullies to the existing stormwater network; existing boundary

walls to the south to the retained, with the existing wire fence over the wall to be repaired.

- 2.3. It is stated that the proposed development was subject to extensive consultation particularly with Pinewood Residents Association and Kerry County Council.
- 2.4. The lands are owned by Kerry County Council, and are subject to a Lease Agreement between Pinewood Residents Association and Kerry County Council for the development and repair of the proposed facility. Kerry County Council has agreed to maintain and insure the facility upon completion, subject to a post-installation independent inspection report confirming compliance with the relevant safety codes.
- 2.5. The proposed development as originally submitted to the Planning Authority on 11th October, 2022 was subject to a Request for Further Information (RFI) dated 29th November, 2022. The response to the RFI dated 12th December, 2022 confirmed that the proposed development does not require roof netting or lighting, will be operational from 9am-9pm daily and will be open to the public all year round and will not require a booking system.

2.6. **Decision**

The Planning Authority decided to grant permission by Order dated 16th January, 2023, subject to 5no. conditions.

Condition no. 2 states:

All equipment and surfacing installed shall comply with the requirements of EN1176:2019 and EN1177:2018. An independent inspection report confirming compliance shall be undertaken following completion by RoPSA or other independent body confirming compliance with the codes and a copy submitted to the Local Authority. **Reason:** In the interest of safety of users of the facility.

Condition no. 3 states:

The existing surface shall be maintained, and no other surface shall be put in place without the written agreement of the Planning Authority. **Reason:** In the interest of orderly development.

Condition no. 4 states:

The facility shall be closed between the hours [of] 21.00 and 09.00 on any day. No booking system shall be in place. The facility shall be managed in accordance with the undertakings given in the further information received on 12/12/2022. **Reason:** In the interest of safety of users of the facility.

Condition no. 5 states:

The facility shall be fully enclosed by fencing to EN117:2019 standard. **Reason:** In the interest of safety of users of the facility.

2.7. Planning Authority Reports

2.7.1. Planning Reports

The key points in primary planner's report dated 28th August, 2022 are that:

- the provision of a recreational area within a residential estate in a R2 residentially zoned area is acceptable.
- The site was previously used as a basketball court in the 1990's.
- The location of the area is not ideal as it is so close to residential properties and because the area isn't directly overlooked by adjoining properties.
- The location of the site adjacent to residential properties may lead to issues with noise and vibration. These issues have not been addressed in the application.
- A Request for Further Information (RFI) dated 29th November, 2022 was issued principally requiring the following:
 - Proposals to show that the proposed development has had regard to local recreational needs.
 - Proposals in relation to the ongoing maintenance of the proposed facility.
 - Details in relation to opening and closing times and details in relation to who will be responsible for administration of a booking system for the facility, and clarity if roof netting is proposed.

- The Planning Authority is concerned that the location close to residential properties in an area that is not directly overlooked by any of those properties will again give rise to issues like antisocial behaviour. Proposals to address concerns around noise, vibration, antisocial behaviour that may arise from the proposed development given its location and proximity to residential properties.

A response to the RFI dated 12th December, 2022 stated that:

- A Feasibility Report carried out by Paul O'Raw Community Consultant has been submitted, showing that the development has taken into consideration the needs of the community by way of:
 - a community survey in 2014, carried out in collaboration between the Pinewood Residents Association and South Kerry Development Partnership.
 - Feasibility Study, funded by the Leader/Rural Development Programme, commissioned between September, 2017 and May, 2018 on the upgrade of the existing basketball court, the provision of adult exercise bikes/equipment plus some raised flower beds and an allotment for Pinewood Estate. This Study examined:
 - The socio-economic profile of the Estate, which identified:
 - A population of 441 persons (Census 2016), and there is an aging population structure. There is an over-representation of empty nest; adolescent children; and adult families, and a higher proportion of lone parents.
 - The labour force participation rate is lower for males and females. The Pobal Deprivation Index (2016) classified the area as being disadvantaged/marginally below average.
 - The youth dependency ratio is lower in Pinewood Estate compared to Killarney Town and County Kerry; the elderly dependency rate is similar to that for Killarney Town and County Kerry.

- Developing the design, focused on meeting the needs of an older population, a small number of children and young people, with an emphasis on accessibility.
 - A community consultation event held on 28th April, 2017 at the proposed development site.
- No objections were received at the consultation event. The consultation identified that adult equipment would be more beneficial to the estate than a children's playground. Fencing to the sides and rear of the court areas will be provided to prevent balls from going into neighbours' gardens. The allotment idea was considered unfeasible.
- The Council will insure the facility once it is complete. A letter from Kerry County Council's Insurance Unit, in the Finance Department dated 16th December, 2021 was enclosed with the response and confirmed that, subject to the receipt of an RPII/RoSPA (or equivalent) post installation independent inspection report confirming compliance with the relevant codes.
- A local resident in the Estate will manage the facility.
- Opening hours would be 9am-9pm. No booking system is required. No lighting is required, nor is roof netting. There will not be any artificial grass preferred by teams for games and training.
- The facility will be used by locals and will also be accessible from Killarney cycle lanes. No additional parking is required.
- A condition can be attached regarding lighting and surfacing of the facility.

The planner's report dated 10th January, 2023 on the response to the RFI recommended a grant of permission, subject to conditions.

The planner's reports are the basis for the Planning Authority's decision to grant planning permission.

2.7.2. Other Technical Reports

There are no other reports on file.

2.7.3. Prescribed Bodies:

Irish Water's submission of 19th November, 2022 stated no objection.

2.7.4. Observations:

Two observations were received.

The one from Mary Mahony, 151 Pinewood Estate, dated 2nd November, 2022 can be summarised as follows:

- The current application is not the right fit for the site.
- The application details what will be put in place, but fails to address the ongoing sustainability, operation, and maintenance of such a facility, and why the original basketball court failed.
- Issues of noise, nuisance and light pollution haven't been addressed.

The one from Pat Fleming, Noel Fleming, Helen Fleming, Angela Fleming, Mary Fleming and Anne Fleming, Mhuire Linn on Park Road, dated 8th November, 2022 stated the following:

- The location selected within the estate is not appropriate for the development of an active play area, and would tend to have a detrimental effect on the amenities of the Fleming family.
- The previous use of the site as a basketball court caused a very considerable nuisance and distress to the Fleming family.
- The proposed development site is not adequately overlooked and this gave rise to a significant level of antisocial behaviour, late night noise, destruction of boundaries, trespass, etc.
- The exact ownership of the land is not clear. A letter of consent from Kerry County Council should have been submitted.
- The proposed development as an active open space area is incompatible with the Existing Residential zoning objective. It represents a material contravention of the Development Plan.

3.0 Planning History

Subject site:

Reference is made on the planning application form to a PA Ref. EX700, Declaration of Exempted Development dated 31st August, 2018, but no details are provided on the file.

The former basketball court was erected by Kerry County Council in the 1990's under the provisions of exempted development.

4.0 Policy and Context

4.1. National Policy

Quality Housing for Sustainable Communities 2007

Section 4.9.3 of the Guidelines set out overall policy requirements for Public Open Space and Landscape Design.

It is stated that the scale and design of public spaces should be appropriate to the particular context and should be defined by appropriately scaled buildings and trees fronting onto them.

It is further stated that the character and function of open spaces that should be provided in a housing development depends on the type of housing scheme, the needs of the residents of the area and the amount of existing open space in the area. Public open spaces should be appropriately located, should preferably have a south or west facing aspect and be overlooked by adjoining dwellings or from frequented roads or footpaths to ensure that there is a measure of passive surveillance. In addition, outdoor space should be given a clear function, character, shape and definition with distinct boundaries, through the positioning of adjacent buildings, walls, fencing, trees and hedges.

Open space should also be laid out so that it is attractive and useable by the residents.

Furthermore, large undefined areas and negative leftover type spaces should be avoided, as should pockets of badly shaped, fragmented or unusable land which are difficult to maintain and may become locations for anti-social behaviour.

4.2. Development Plan

Section 6.3.1 of the Kerry County Development Plan 2022-2028 states that, in relation to Sporting, Leisure Facilities and Open Space, the provision of sporting, recreation and amenity facilities, which can cater for the demands of an increasing population, and which will be accessible for all sectors and age groups of the population is a central element in the delivery of sustainable communities. It is stated that the Council will normally favour any development proposals for sustainable recreational facilities for the community in a suitable location.

Objective KCDP-31 seeks to *Facilitate the suitable provision of sports facilities having regard to local recreational needs.*

Objective KCDP-32 seeks to *Implement the recommendations of 'Developing Play in Kerry' policy in a sustainable manner, in conjunction with all relevant agencies.*

Objective KCDP-35 seeks to *Provide multifunctional open spaces at locations deemed appropriate providing for both passive and active uses.*

Objective KA 5 of the Killarney Town Development Plan 2022-2028 included in Volume 2 of the Kerry County Development Plan 2022-2028, seeks to *Ensure that the town is attractive, liveable, vibrant, and a well-designed urban place with diverse and integrated communities enjoying a high quality of life and promote an enhanced sense of place, liveability and personal wellbeing.*

In relation to Recreation, Amenity and Open Space, the following policies apply:

KA 68 *Ensure that usable and high-quality open space is provided to enhance the character of residential areas.*

KA 70 *Provide adequate recreation and amenity open space for the future development of the town, as a whole, for residents and visitors alike.*

KA 71 *Improve accessibility to recreational and amenity areas and include for sustainable modes of transport, where appropriate.*

KA 72 *Retain, extend and enhance opportunities for recreation within recreation and amenity areas for all members of the community including people with disabilities.*

The site is zoned R2, 'Existing Residential'. By reference to the zoning matrix included in Volume 2 of the Kerry County Development Plan 2022-2028, public

facilities and infrastructure are open for consideration uses on lands zoned residential.

4.3. Natural Heritage Designations

The proposed development site is within the screening zone for Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment (incl. Flesk River) SAC (Site Code: 000365) and Killarney National Park SPA (Site Code: 004038).

4.4. EIA Screening

Having regard to the small scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development.

5.0 The Appeal

5.1. Grounds of Appeal

There are 2no. appeals submitted against the notification of Kerry County Council to grant permission for the proposed development. The appeals generally raise the same issues as contained in the original submissions to Kerry County Council, including:

- The plan included in the O'Raw report is not the same plan that was consulted on. The plan on which the consultation was based included soft landscaping, gardens and allotments which the residents wanted.
- The proposed development is not aligned with the Plan. It is aimed at teenage children. There is a much older demographic in the Estate and the proposed development does not cater for this demographic.
- The Planning Authority was concerned that the proposed development did not meet the standards set out in the Section 28 Guidance on Quality Housing for Sustainable Communities but no further information was submitted to address this in the application.

- The Planning Authority stated that the location of the site adjacent to residential properties may lead to issues with noise and vibrations, but no assessments were undertaken and no mitigation proposed. The Planning Authority did not address the concerns raised in its initial planning report in its final assessment of the proposed development.
- The site was historically used as a soccer and basketball court. Antisocial behaviour and nuisance occurred leading to the facility being dismantled. When the basketball court fell into disuse, there was no longer any nuisance to the Third Party.
- No explanation was provided on the reason for not providing roof netting. The proposed development relies on existing hedging to the south of, and outside, the proposed development site.
- The proposed facility is likely to have a significantly negative effect on the residential amenity of the Third Party's property fronting Park Road.
- The proposed development is in the wrong location in that it will not be sufficiently overlooked or supervised, leading to antisocial behaviour as a similar facility did in the past.
- New fencing is stated as being not required because of the existing pine hedging, however these trees are located on private property and are not in good condition.
- There are unresolved issues with respect to ownership and management of the proposal, which will have a detrimental effect on their amenity.
- The exact nature of ownership of the land is not very clear. A letter of consent from Kerry County Council should have been submitted.
- The proposal is a material contravention of the Development Plan.

5.2. Applicant Response

None.

5.3. **Planning Authority Response**

No further comment (by report dated 28th February, 2023).

5.4. **Observations**

None.

5.5. **Further Responses**

None.

6.0 **Assessment**

6.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

6.2. In relation to land ownership, the application submitted to Kerry County Council indicated that the applicant was the occupier of the site and lands were disposed to the Residents Association by way of a Lease Agreement, and the legal owner is Kerry County Council. The application was validated by Kerry County Council. I am also mindful of Section 34(13) of the Planning and Development Act, 2000, as amended, on this matter.

6.3. The main issues, therefore, are as follows:

- Residential Amenity
- Material Contravention
- Appropriate Assessment

6.4. Residential Amenity

6.4.1 I have given due consideration to the detailed concerns raised by the Third Parties about the impact of the proposed development on their amenities.

- 6.4.2 The suitability of the proposed development is called into question, having regard to the demographic of the Pinewood Estate, and to the nature and extent of the proposed development relative to the Feasibility Study that was carried out to inform it.
- 6.4.3 The appropriateness of the site for the intended use is raised, principally because of the lack of direct overlooking that is possible, in the context of the level of antisocial behaviour, nuisance and general disturbance associated with its former use as a basketball court.
- 6.4.4 It is also considered that insufficient details have been provided on the overall management and maintenance of the proposed development to address the very real concerns raised about the prospect of antisocial behaviour, noise, damage to property, and general disturbance.
- 6.4.5 These concerns are compounded by the inadequate response of the applicant to the RFI from Kerry County Council.
- 6.4.6 I also have given due consideration to the applicant's case that the origin of the proposed development is a result of feedback from a door-to-door community survey carried out by the applicant in collaboration with the South Kerry Development Partnership, which led to the preparation of, and consultation on, a Leader-funded Feasibility Study specifically on the upgrade of the existing basketball court, the provision of adult exercise bikes/equipment, as well as raised flower beds and an allotment.
- 6.4.7 I am also mindful of the former use of the proposed development site as a basketball court, as an active element of the overall public open space offering in the established Pinewood Estate.
- 6.4.8 I also note that the proposed development site is located in the southern section of a large central public open space area. While I note that the proposed development site is not directly overlooked by 80 Pinewood Estate to the immediate west, it is overlooked from 150 Pinewood Estate to the immediate east and is visible from a number of residences to the north, at a minimum from 104-109 and 116-117 Pinewood Estate, with passive surveillance from the footpaths in the vicinity of the proposed development site.

6.4.9 Furthermore, it is important to note that Kerry County Council is committed, in writing, to insuring the facility once it is completed, subject to the receipt of an RPII/RoSPA (or equivalent) post installation independent inspection report confirming compliance with the relevant codes.

6.4.10 In addition, a local resident in the Estate will manage the facility.

6.4.11 However, I am mindful of the concerns raised by the Third Parties with respect to the management and maintenance of the previous basketball court at the proposed development site.

6.4.12 I do agree that the applicant did not fully address the concerns raised either by the Third Parties.

6.4.13 In this context, it is recommended that, were it minded to grant permission, the Board should attach conditions of the following nature and extent in order to safeguard the amenities of residents, particularly those adjacent to the proposed development site:

- (a) A limitation on the hours of use in particular during the winter season.
- (b) A requirement for fencing around the whole site.
- (c) A requirement for roof netting
- (d) That no lighting of any kind is permitted.
- (e) That the playing of amplified music is not permitted.
- (f) A publicly available management and maintenance scheme is prepared for the proposed development.

6.4.14 I also note the absence of any landscaping from the proposed development. In this respect, a landscaping scheme shall also be submitted to the Planning Authority prior to the commencement of development to enhance the proposed development further.

6.5. Material Contravention

6.5.1 In relation to material contravention, I note that the proposed development site is zoned R2, 'Existing Residential', and that in the zoning matrix included in Volume 2 of the Kerry County Development Plan 2022-2028, public facilities and infrastructure are open for consideration uses on R2 zoned lands.

- 6.5.2 The reuse of an existing hardstanding area as a new active amenity facility within the public open space provision of Pinewood Estate is in accordance with the principles of sustainable development as is the reinstatement of the former basketball court, which appeared to be a popular facility for the Estate.
- 6.5.3 The addition of the goal ends as well as the outdoor exercise equipment will encourage a range of users, which, in my opinion, conforms with the recreational and open space policies and objectives of the Kerry County Development Plan 2022-2028 and its accompanying Killarney Town Development Plan 2022-2028.
- 6.5.4 In this respect, the proposed development provides suitable sports facilities based on local recreational needs in compliance with objective KCDP-31 of the Plan.
- 6.5.5 It also provides multifunctional open space at an appropriate location for both passive and active use consistent with Objective KCDP-35 of the Plan.
- 6.5.6 Regard must also be had to section 6.3.1 of the Plan which states that the Council will normally favour any development proposals for sustainable recreational facilities for the community in a suitable location. The proposed development site is a former basketball court in a large, central public open space area of Pinewood Estate.
- 6.5.7 Equally, having regard to the policies and objectives of the Killarney Town Development Plan, the proposed development of a community recreational area will ensure that usable and high-quality open space is provided to enhance the character of Pinewood Estate, in accordance with policy objective KA 68 of the Plan. It will also retain, extend and enhance opportunities for recreation within an established recreation and amenity area for all members of the community, including people with disabilities, consistent with policy objective KA 72 of the Plan.
- 6.5.8 For these reasons, it is my opinion that the proposed development does not constitute a material contravention of the Plan.

6.6. Appropriate Assessment

6.6.1 Having regard to the nature and scale of the proposed development and 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

7.0 Recommendation

7.1. I recommend that planning permission be granted for the reasons and considerations set out below and subject to the following conditions.

8.0 Reasons and Considerations

Having regard to the nature and extent of the proposed development, to the former use of the proposed development site, it is considered that, subject to the conditions set out below, the proposed development would not seriously injure the residential or amenities of adjoining properties. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 11th October, 2022 as amended by the further plans and particulars submitted on the 12th December, 2022 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>All equipment and surfacing installed shall comply with the requirements of the standards that apply to equipment used in publicly accessible areas</p>

	<p>(EN1176:2019 and EN1177:2018 or any other statutory provision amending or replacing them). An independent inspection report confirming compliance shall be undertaken following completion by RPII/RoPSA or other independent body confirming compliance with the above standards and a copy submitted to the Local Authority.</p> <p>Reason: In the interest of safety of users of the facility.</p>
3.	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the use of the proposed development shall be restricted to a community recreational area as specified in the lodged documentation, unless otherwise authorised by a prior grant of planning permission.</p> <p>Reason: To protect the amenities of property in the vicinity.</p>
4.	<p>(a) The hours of operation of the proposed development are 9am-9pm, except during the winter season (the beginning of December to the end of February), when the hours of operation are restricted to 9am-5pm only.</p> <p>(b) No booking system is permitted</p> <p>(c) No lighting of any kind is permitted.</p> <p>(d) No playing of any amplified music is permitted.</p> <p>Reason: In the interests of residential amenity.</p>
5.	<p>No structures other than those specified in the lodged documentation shall be erected at the proposed development site unless otherwise authorised by a prior grant of planning permission.</p> <p>Reason: In the interests of orderly development.</p>
6.	<p>Other than for health and safety purposes only, no advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected unless authorised by a further grant of planning permission.</p>

	Reason: In the interests of orderly development.
7.	<p>A suitable wire mesh fence of robust construction shall be erected along all boundaries of the proposed development site. Suitable roof netting shall also be erected. Precise details of the fencing and netting shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of public safety and residential amenity.</p>
8.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
9.	<p>A management scheme, providing adequate measures for the management and maintenance of the proposed development, including measures to control noise, and a system for logging and addressing complaints, shall be submitted to and agreed in writing with the planning authority, and available publicly, before the proposed development comes into operation.</p> <p>Reason: To provide for the future maintenance of the development in the interest of residential amenity and orderly development.</p>
10.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of residential and visual amenities.</p>

Aiden O'Neill

Aiden O'Neill
Planning Inspector

5th May, 2023.

