



An
Bord
Pleanála

Inspector's Report ABP – 316187-23

Development	Relocation of Western boundary to extend green area, proviso of one multistore garden shed to northeast corner of green, ancillary site works and landscaping and service connections.
Location	Bowling Green, Park Lane, The Burnaby, Greystones.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	22 704
Applicant	Greystones Lawn Bowling Club.
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant	Greystones Lawn Bowling Club.
Date of Site Inspection	24 th July, 2023.
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The application site has a stated area of 2,650 square metres and is that of the Greystones Lawn Bowling Green (GLBC). It incorporates a triangular shaped space to the west side of the bowling green in Burnaby Park which the local authority recently upgraded. Along the perimeter of the bowling green there are structures which include the clubhouse, changing and storage and waste facilities.
- 1.2. The club grounds are located at the southern end of Burnaby Park, just north of Park Lane which leads to Mill Road and the sea front. The club grounds are enclosed by dense hedge planting and fencing and there are gates at the southern western end and at the centre of the northern frontage. A sensory garden is at the southeast in Burnaby Park adjacent to single storey buildings and the bowling club grounds.
- 1.3. The space between the outer side of fencing and hedgerow along the west side of the bowling club and the east boundary of Burnaby Road included in the application site area is incorporated into the park and has outdoor seating and chess tables.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority, which is accompanied by are copies of Lease maps, indicates proposals for:-

Relocation of Western boundary annexing the adjoining triangular space into the Bowling club grounds in Burnaby Park. The existing fencing along the western boundary of the club grounds is to be removed and relocated with the club grounds and enclosed by 2.4 metres' high fencing and planting.

Provision of a multistore garden shed with a stated floor area of nine square metres at the side of the bowling green in the northeast corner and,

ancillary site works and landscaping and service connections.
- 2.2. A further information submission was lodged on 10th February, 2023 with copies of the applicant's sporting lease and a statement. It is stated that the ACA will not be affected by a minor relocation of the boundary and its planting; that mature trees will not be affected, a claim that the proposed hedgerow will enhance the distinctive character of the ACA which would not be altered. It is stated that the subject lands,

to be used as a French boules court and that the club is a Community Club and facility with negligible impact on the park.

3.0 Planning Authority Decision

3.1. Decision

By order dated 7th March, 2023, the planning authority decided to refuse permission based on two reasons. Reason No 1 relates to unauthorised development with reference to Condition No 4 of the permission granted under P. A. Reg. Ref. 89/4511. (See section 4 planning history below.) regarding an unauthorised entrance and structures erected in the north-east corner of the site. Reason Two relates to excessive scale and substandard development for the location, undesirable precedent for similar development in the ACA and adverse visual and residential amenities,

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer's final report issued further to review of a submission received on 10th February, 2023 in response to the request for additional information issued on 12th August 2022 indicated a recommendation for refusal of permission based on the two reasons referred to under 3.1. above. Concerns raised as to expansion of the site northwards to land without the benefit of planning permission having regard to condition No 4 of a grant of permission under 89/4511 concerning location and use of an entrance, which was not taken up. (See section 4 – planning history.)

In addition, the planning officer states that the further information is unsatisfactory:-. The permitted structures in the northwest corner of the site under P. A. Reg. Ref. 08/36 have been replaced by different structures leading to concerns as to potential consolidation of unauthorised development. The applicant did not address the request for justification of the proposed development having regard to concerns about negative visual impact, confirm the proposed use of area to be annexed and to ensure passive surveillance and mitigation of any negative impact on the public realm, ensure consent to the alter the boundaries and, provide clear details for the

proposed new entrance and about an entrance on the south west corner with regard to visual and residential amenities.

The applicant intends to provide for a French boules court but an application for change of use is required as it differs from the use under P. A. Reg. Ref. 08/36.

The statement in the technical reports (See section 3.2.2 below) that the applicant does not have a valid lease to due failure to demonstrate its interest by maintaining the lands to be annexed and that the local authority therefore has control over the lands is not fully endorsed by the planning officer who suggests that the matter is a civil matter to be resolved and clarified outside of the planning remit.

The planning officer states that the structures on the site are not fully consistent with the details for the grant of permission under P.A. Reg. ref. 08/36 and indicates concerns as to potential for consolidation of unauthorised development in the event of positive consideration of the current proposal.

3.2.2. Other Technical Reports

The Municipal District Engineer in his report indicates that:-

- the lease to GLBC was provided by the local authority for the purposes of implementing the grant of permission under P. A. Reg. Ref 89/4511 which was not implemented. As a result, a double entrance gate to Park Lane was not erected and club members drive through to park.
- The rationale for the leasing of the fenced off area to GLBC P.A. Reg Ref. 08/36 no longer applies because the permitted development as not implemented, and the grant of permission has lapsed.
- The Municipal District has vested interest in the space to be annexed because it has maintained and managed it so regardless of the lease, it is considered that Wicklow County Council is on control of the land.
- The area between the west boundary of the GLBC and Burnaby Park along Burnaby Road was improved by WCC to open it up, provide for more passive surveillance and reduce anti-social behaviour. There are improvements to paths and chess tables are provided as a public amenity. A grant of permission high fence narrowing this area would be detrimental to the area and benefit members at GLBC as opposed to the public at large.

If permission is granted it is requested that a condition be attached precluding erection of entrance gates on the west boundary and confining vehicular access to Park Lane and that the boundary be fenced, with the hedging allowing for passive surveillance of the park from the bowls club.

3.2.3. **Third Party Observations**

An objection was made by the Burnaby Residents Association in which issues raised include concerns as to adequacy of legal interest, clarity details on application site boundaries and proposed boundary treatment, conflict between private and public interests and amenity of the park, lack of conservation impact assessment and impact on the character of the ACA.

4.0 **Planning History**

P.A. Reg Ref. 18/52: Permission was granted for two timber structures and a log cabin structure for use as a changing room.

P.A. Reg Ref. 15/388: Permission was granted for removal of two timber structures in use as changing areas and for installation of a steel structure for use as a changing area and ancillary works.

P.A. Reg Ref. 08/36: Permission was granted for demolition of a split-level timber clubhouse and construction of a single storey clubhouse incorporating an indoor bowling hall, kitchen, storage and sanitary facilities and for revisions to site boundaries, connection to existing services and associated landscaping and site works. This grant of permission was not taken up and has since lapsed.

P.A. Reg Ref. 89/4511: Permission was granted for construction for a bowling green with a surrounding fence and a timber chalet. This grant of permission was not taken up and has since lapsed. Under Condition No 4 the applicant is required to restrict the use of proposed entrances gates to a loading entrance only; to locate a pedestrian entrance for access to the bowling green inside the park at the north eastern corner or the north western corner or, the northern boundary subject to a written agreement with the planning authority for reasons of traffic safety.

5.0 Policy and Context

5.1. Development Plan

The operative development plan is the Wicklow County Development Plan, 2022-2028.

Development and Design Standards are in Appendix 1.

Built Heritage is within Chapter 8.

Burnaby is a statutory Architectural Conservation Area. Table 8.1, Maps 8.3.

5.2. Greystones and Kilcoole LAP 2013-2019

There is no official record of the plan's statutory period being extended. Further to an enquiry with the local authority it is understood that it is being taken into consideration in development management unless any provisions are in conflict with the CDP. (A Draft LAP is on public consultation at present.)

The site is within The Burnaby which is subject to the zoning objective "Existing residential" and also subject to the specific objective: . R10 – Residential – 10/ha and ... *'To provide for the development residential communities up to a maximum density of 10 units per hectare and to preserve and protect residential amenity'*.

Policy HER 12 provides for preservation of the character of the ACAs in accordance with policies and objectives provided for in Section 9 under Objective HER 12.

The Burnaby ACA is in Section 3.4 and Heritage Features are in Appendix B

5.3. Natural Heritage Designations

The following designated sites are within 5 km of the appeal site: • Bray Head SAC (Site Code 000714) – circa 2 km to the north • Glen of the Downs SAC (Site Code 000719) – circa 2.7 km to the west • The Murrough Wetlands SAC (Site Code 000730 – circa 3 km to the south.

5.4. EIA Screening

Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was received from BBA Architecture on behalf of the on 3rd April, 2023

6.1.2. With regard to Reason 1 it is contended that the reasoning can be dismissed, and the Reason set aside based on the grounds outlined below:-

- The applicant is fully aware of the provisions of section 34 (13) of the Act. The lands having been under the control of the applicant through two valid thirty-five-year renewable sporting leases. The planning officer notes that the issue regarding the lease is outside the planning remit and there is no suggestion that it is null and void.

The lease for the subject lands was subject of a grant of planning permission (for an extension of the bowling green representing less than 2.3% of the Burnaby Park area) which was not implemented. (P. A. Reg. Ref. 08/36 refers). The bowling has a very low subscription fee so that it caters for the large for the community, therefore not benefitting a minority of the community. The issue regarding the lease on the land for the proposed extension has influenced the planning authority, the Lessor being the local authority.

According to an accompanying statement by the applicant's solicitors the applicant has sufficient legal interest in all the lands subject to the proposal to enable it to lodge the application, is fully compliant with covenants and conditions therein and, is sole occupant of the lands subject of the lease.

- With regard to the objectives under Policy HER 12 in the LAP for the ACA (which provide for enhancement and conservation and enhancement of

character and partnership with community groups in implementing environmental improvements, additional fencing was erected on the boundary with the park to v vehicles from entering. Should permission be granted the applicant would accept a condition for omission of the gates on the proposed western boundary.

- The reference to “unauthorised structures” in the north-east corner of the site Reason is incorrect. Permission is granted for the structures under P.A. Reg. Ref. 18/52 and in the planner’s assessment it was considered that the Bowling green was screened as regards potential impact on the ACA.

6.1.3. With regard to Reason Two it is contended that the reasoning can be dismissed, and the Reason set aside based on the grounds outlined below:-

- The application site and Burnaby Park are located on the periphery of the ACA and is described in Appendix B of the LAP in which there are details of the heritage features and characteristics. The Burnaby Park therein is described as, *“substantial open green space with a bowling green, lawn areas and mature trees ... the bowling green is an intrinsic element within the park.”*
- The intrinsic green characteristics of the ACA are informed by the arts and craft style, size of plots and building lines boundaries (iron railings and hedges to be promoted in new and redevelopment) a wooded green character and a leafy green suburban streetscape.
- The scale, height and nature of the proposal is the same as that for which Permission is granted for the structures under P.A. Reg. Ref. 18/52 and reflects screening that reduces impacts on the ACA and the post and wire element will be screened by the proposed hedging which is not overbearing. The applicant would accept a condition for modifications to height and species to be planted. The supposed loss of amenity of the park, is inconsequential.
- There is no potential for precedent for similar development and a lease from the local authority would be required.
- There is no potential effect on residential amenities within the ACA. Use of the road for parking in impact on amenities is much greater than that of the

proposed development and it is establishes the basis for residential and visual amenities in the area. It is not clear as to how passive surveillance of the area would be affected by the proposal. Passive surveillance would result from the houses on the opposite side of the road. The concept passive surveillance is that of overlooking of spaces within residential developments. Anti-social behaviour is a law enforcement issue and, occurs mostly after dark.

6.2. **Planning Authority Response**

There is no submission from the planning authority on file.

7.0 **Assessment**

7.1. The issues central to the determination of a decision can be considered below under the following subheadings.

Legal Interest

Unauthorised Development

Relocation of the west side boundary

Multi-store Garden shed.

Appropriate Assessment

Legal Interest

7.2. The issue surrounding legal interest and, thus the capacity to implement the development incorporating the space at the west side of the club grounds which have been maintained and upgraded by the local authority cannot be addressed and resolved through determination of the decision on the appeal and the planning remit overall. As stated in the planning officer report, it is Civil Matter to be resolved through the legal system. It should be borne in mind that a grant of planning permission does entitle an applicant to implement the permitted development having regard to section 34 (13) of the Planning and Development Act, 2000, as amended.

Unauthorised Development

- 7.3. Resolution of the matters as to possible unauthorised development, over which there is dispute as to the planning status is within the remit of the planning authority and outside the remit of An Bord Pleanála. However, it would not be appropriate in determining an appeal to allow for a grant of permission that would result in consolidation of an unauthorised development contrary to the interests of proper planning and sustainable development.

Relocation of the west side boundary.

- 7.4. Burnaby Park has been altered by the severance of part of the original park lands to provide for the bowling club on lands at the southern end which is fenced off and enclosed with high hedging. As such this space facilitates active recreational activity but is restricted in access in that it is a members' only facility irrespective of the stated low cost and ease with which membership might be obtained. The public recreational amenity of the space to be annexed and enclosed by the proposed relocated fencing has been enhanced in combination with the remaining narrow strip by the upgrading and maintenance works undertaken by the local authority.
- 7.5. It is considered that the incorporation of the space into the bowling grounds and its enclosure by the proposed relocated boundary results in loss of and a reduced quality remaining public amenity space within the public realm and adverse impact on the visual amenities of the ACA reason of the high fencing, notwithstanding any possible provision for supplementary planting which is agreeable to the applicant.
- 7.6. The configuration of the reduced parkland space which would remain between the west boundary of the park and relocated fencing would form a narrow strip at the side of the relocated boundary and bring about an element of peripherality within the park and significant sense of enclosure due to the high fencing and supplementary planting. In this regard, the concerns of the planning officer as to public safety implications, potential for anti-social behaviour and lack of scope for passive surveillance are considered reasonable and are within the scope of a planning remit.
- 7.7. While scope for passive surveillance is designed into residential development schemes as contended in the appeal, the Burnaby itself is an established planned residential estate. The centrally focussed park is overlooked from the public realm

along the perimeter and the dwellings and commercial properties on the opposite sides of the roads and it is not agreed that the passive surveillance as an integral element of the public realm in an urban built environment can be dismissed and set aside. To permit a development that would as a consequence result in significant reduction in and potential loss of a public amenity and risk to public safety is contrary to the interests of proper planning and development.

Multi-store Garden shed.

- 7.8. Subject to the appropriate screening of the bowling grounds from views within Burnaby Park and the surrounding area, the modest sized garden shed is acceptable, but it is agreed with the planning officer that it would be necessary to ensure there would be no consequential consolidation of undesirable unauthorised development.

Appropriate Assessment Screening

- 7.9. Having regard to the nature and scale of the proposed development, to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/ or pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

8.0 Recommendation

Given the foregoing, it is recommended that Permission be refused based on the following reasons and considerations generally on the grounds within Reason Two attached to the planning authority decision to refuse permission.

As discussed in the assessment, it is considered that there is lack of clarity as to whether the applicant does or does not have sufficient legal interest in the lands to be annexed to facilitate the relocation of the boundary. However, there is no documentary evidence to show that Title of the applicant is void if its acquisition for specific works intended were not implemented. Concerns as to unauthorised development are also noted.

9.0 Reasons and Considerations

It is considered that by reason of the scale and height and design and materials of the fence to be relocated and erected on the west boundary of the space to be annexed and, by reason of the creation of sense of enclosure of the remaining area between the relocated fence and Burnaby Road which would form a long narrow space the proposed development, the proposed development would be visually conspicuous and overbearing and would result in serious injury and adverse impact on the amenities of Burnaby Park, the visual amenities, character and integrity of the Burnaby Architectural Conservation Area the public realm and the residential amenities of property in the vicinity. The proposed development would set undesirable precedent for similar development and would 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.

Jane Dennehy
Inspector
25th July, 2023.