



Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Donal Kelleher,
11 The Close,
Ardpatrick,
Lady's Well,
Cork City.

22/03/2024

RE: Section 5 Declaration R823/24 Land at the communal recreational/ amenity area of Ardpatrick, Lady's Well, Cork City (Formerly Susie's Field)

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 19/01/2024, I wish to advise as follows:

The Planning Authority, in view of the above and having regard to —

- Section 2, 3 and 4 of the Planning and Development Act 2000 as amended, and The Planning Authority considers that – The erection of a fence and gate on land at the communal recreational/ amenity area of Ardpatrick (formerly Susie's Field) between Assumption Road and Pope's Road, Lady's Well, east of the North City Link Road (N20), Cork City **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued.

Is mise le meas,

David O'Regan

Assistant Staff Officer,
Community, Culture &
Placemaking Directorate



We are Cork.

PLANNER'S REPORT		Cork City Council
Ref. R823/24		Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	Whether the proposed erection of a fence and gate is, or is not, exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) ('PDA') and the PDR, whether such development would result in the segregation of the estate, and the control, and or prohibition, of access through Ardpatrick, and whether this would represent development that would materially alter the terms of the parent planning permission, as amended, and the interruption of a recreational amenity currently enjoyed by residents and members of the public.	
Location	Land at the communal recreational/ amenity area of Ardpatrick (formerly Susie's Field) between Assumption Road and Pope's Road, Lady's Well, east of the North City Link Road (N20), Cork City.	
Applicant	Donal Kelleher	
Date	22/03/2024	
Recommendation	<i>Is development and is exempted development.</i>	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. REQUIREMENTS FOR A SECTION 5 DECLARATION

Section 5(1) of the Planning and Development Act 2000 as amended states,

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a section 5 declaration are set out in the Act.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

In framing the question to the planning authority, the applicant states in Q2 of the application form:

Whether the proposed erection of a fence and gate is, or is not, exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) ('PDA') and the PDR, whether such development would result in the segregation of the estate, and the control, and or prohibition, of access through Ardpatrick, and whether this would represent development that would materially alter the terms of the parent planning permission, as amended, and the interruption of a recreational amenity currently enjoyed by residents and members of the public.

The applicant has submitted a cover letter setting out their position.

3. SITE DESCRIPTION

The subject site is in located in Ardpatrick, an existing housing development located between Assumption Road and Pope's Road. The site relates to part of the open space area serving the housing development.

4. PLANNING HISTORY

Subject Site

Planning Ref.	01/25226
Development Description	Construction of 58 x 2 duplexes containing two apts. & nine detached houses on site cont. Susie's field
Outcome	Cork Corporation granted permission for 91 units.
Appeal	Third party appeal (Ref. 28.131123). ABP granted permission for 72 dwelling units.
Planning Ref.	05/29770
Development Description	Residential development of 22 three-bedroom houses. Proposed development is three storeys in height and is amendment to permitted development TP: 01/25226 & PL.28.131123 from one block of 22 terraced houses to 6 blocks of 3 terraced houses and 1 block of 4 terraced houses.
Outcome	Permission granted.
Appeal	N/a
Planning Ref.	06/30676
Development Description	to vary permission granted by An Bord Pleanála under reference PL.28.131123, by removing condition number 3, which provides that: Appropriate childcare facilities, in accordance with the Planning Guidelines on Childcare Facilities issued by the Department of the Environment and Local Government in June 2001, shall be provided and shall be the subject of a separate application for permission to the planning authority.
Outcome	Permission refused.
Appeal	Decision appealed to ABP by applicant (first party appeal) (Ref. 28.218186). Permission refused.
Planning Ref.	06/30679
Development Description	To vary the permission granted by ABP under ref. PL.28.131123 by removing condition no. 12, which provides that: Prior to commencement of development, a management scheme providing adequate measures relating to the future maintenance of private open spaces, roads and communal areas in a satisfactory manner shall be submitted to the planning authority for agreement.
Outcome	Permission refused by local authority.
Appeal	Decision appealed to ABP by applicant (first party appeal) (Ref. 28.218187). ABP decided to grant permission.
Planning Ref.	07/31598
Development Description	Proposed new creche to cater for 44 children as per planning conditions granted under PL.28.131123, with 8 no. 2-bedroom duplex houses overhead, accessed through existing access roads on site, and all associated site works.
Outcome	Permission refused.
Appeal	Decision appealed to ABP by applicant (first party appeal) (Ref. PL 28.222860). Permission refused.
Planning Ref.	07/32036

Development Description	Amend 18 no. existing houses, by replacing garage door to front of dwelling with patio doors and change garage use to living use.
Outcome	Permission granted.
Appeal	n/a

5. LEGISLATIVE PROVISIONS

5.1 The Act

Section 2(1),

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1),

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or ‘the making of any material change in the use of any structures or other land.’

Section 4(1)(d),

The following shall be exempted developments for the purposes of this Act – development by the Council of an urban district in that district.

Section 4(2),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001-2013.

Section 5(1),

(See section 1 of this report)

Section 177U (9) (screening for appropriate assessment)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

(local authority own development)

Section 179 (1) (a),

The Minister may prescribe a development or a class of development for the purposes of this section where he or she is of the opinion that by reason of the likely size, nature or effect on the surroundings of such development or class of development there should, in relation to any such development or development belonging to such class of development, be compliance with the provisions of this section and regulations under this section.

Section 179 (1) (b)

Where a local authority that is a planning authority proposes to carry out development, or development belonging to a class of development prescribed under paragraph (a) (hereafter in this section referred to as “proposed development”) it shall in relation to the proposed development comply with this section and any regulations under this section.

Section 179 (1) (c)

The Minister may prescribe specified cases or classes of development by local authorities for the purposes of this section where he or she is of the opinion that it is necessary by reason of its size, nature or effect on its surroundings.

Section 179 (1) (d)

This section shall also apply to proposed development which is carried out within the functional area of a local authority which is a planning authority, on behalf of, or in partnership with the local authority, pursuant to a contract with the local authority.

5.2 The Regulations

Development prescribed for the purposes of section 179 of Act.

Article 80(1)

Subject to sub-article (2) and sub-section (6) of section 179 of the Act, the following classes of development, hereafter in this Part referred to as "proposed development", are hereby prescribed for the purposes of section 179 of the Act —

- a) The construction or erection of a house,
- b) the construction of a new road or the widening or realignment of an existing road, where the length of the new road or of the widened or realigned portion of the existing road, as the case may be, would be —
 - i. in the case of a road in an urban area, 100 metres or more, or
 - ii. in the case of a road in any other area, 1 kilometre or more,
- c) the construction of a bridge or tunnel,
- d) the construction or erection of pumping stations, treatment works, holdings tanks or outfall facilities for waste water or storm water,
- e) the construction or erection of water intake or treatment works, overground aqueducts, or dams or other installations designed to hold water or to store it on a long-term basis,
- f) drilling for water supplies,
- g) the construction of a swimming pool,
- h) the use of land, or the construction or erection of any installation or facility, for the disposal of waste, not being—
 - i. development which comprises or is for the purposes of an activity in relation to which a waste licence is required or
 - ii. development consisting of the provision of a bring facility which comprises not more than 5 receptacles,
- i) the use of land as a burial ground,
- j) the construction or erection of a fire station, a library or a public toilet, and
- k) any development other than those specified in paragraphs (a) to (j), the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus.

Article 80(2)

- (a) subject to paragraph (b), this Part shall not apply to proposed development that a local authority that is a planning authority proposes to carry out outside its functional area.
- (b) This Part shall apply to development of a class specified in sub-article (1) (b) or (c) that a local authority that is a planning authority proposes to carry out outside its functional area.
- (c) This Part shall also apply to development which is carried out within the functional area of a local authority that is a planning authority, on behalf of, or in partnership with the local authority, pursuant to a contract with the local authority

6. ASSESSMENT

The purpose of this report is to assess whether or not the matter in question constitutes development and whether its fall within the scope of exempted development. Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under section 5.

The question subject to this section 5 request relates to a local authority proposal. Limited details of the proposal have been submitted with the section 5 application.

6.1 Development

The first issue for consideration is whether or not the matter at hand is 'development'.

'Development' as defined in the Act (3)(1) comprises two possible chief components: *'the carrying out of any works on, in, over or under land', or 'the making of any material change in the use of any structures or other land'*. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

'Works' is defined in section 2(1) of the Act as *'the carrying out of any works on, in, over, or under land' including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal, and in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.'*

The erection of a fence and gate is an act of construction and therefore falls within the definition of 'works'. Therefore, the proposal constitutes development within the meaning of the Act.

Conclusion: Is Development

6.2 Exempted Development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines 'exempted development' as having 'the meaning specified in section 4' of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I consider that the proposals come falls with subsection (1) of section 4 (i.e. the Act).

Section 4(1)

I consider the erection of a gate and fence would come within the scope of section 4(1)(d) being development by the council of an urban district in that district.

We are of the understanding that the cost of the fence and gate is less than €126,00 and the proposal would therefore not be subject to the Part 8 process under Section 179 of the Planning and Development Act, 2000 (as amended) and Article 80(1) of the Planning and Development Regulations 2001 (as amended).

It is considered that the proposal would not result in a material change of use. The communal amenity space area would remain an area of communal amenity space.

A large part of the applicant's objections relates to the parent permission and refers to parts of the Act which do not apply to local authority own development.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly, it is considered that an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

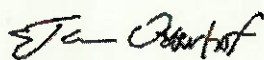
8. RECOMMENDATION

It In view of the above and having regard to –

- Section 2, 3 and 4 of the Planning and Development Act 2000 as amended, and

The Planning Authority considers that –

The erection of a fence and gate on land at the communal recreational/ amenity area of Ardpatrick (formerly Susie's Field) between Assumption Road and Pope's Road, Lady's Well, east of the North City Link Road (N20), Cork City **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.



Jan Oosterhof
A/ Executive Planner
21/03/2024

Melissa Walsh
Senior Executive Planner
21/03/2024

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail planning@corkcity.ie
Fón/Tel: 021-4924709
Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

Donal Kelleher

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

Land at the communal recreational/ amenity area of Ardpatrick (formerly Susie's Field) between Assumption Road and Pope's Road, Lady's Well, east of the North City Link Road (N20), Cork City

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:
Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

Whether the proposed erection of a fence and gate is, or is not, exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) ('PDA') and the PDR, and whether such development would result in the segregation of the estate, and the control, and or prohibition, of access through Ardpatrick, and whether this would represent development that would materially alter the terms of the parent planning permission, as amended, and the interruption of a recreational amenity currently enjoyed by residents and members of the public.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).

Please refer to enclosed letter for further details.

DEVELOPMENT MANAGEMENT
CCP
19 JAN 2024
CORK CITY COUNCIL

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4. Are you aware of any enforcement proceedings connected to this site?

If so please supply details: No, N/A

5. Is this a Protected Structure or within the curtilage of a Protected Structure? No

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority? N/A

6. Was there previous relevant planning application/s on this site?

If so please supply details:

Cork City Council Reg. Ref.'s 01/25226 and 05/29770ABP and ABP Reg. Ref. PL.28.131123

7. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	N/A
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) N/A
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle) Communal recreational / amenity open space for residential estate with public right of way	Proposed/existing use (please circle) Segregation into two separate estates by controlling or prohibiting access to the communal area and pedestrian through access

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	Proposal relates to a communal recreational / amenity open space for residential estate with public right of way. I am the owner-occupier of a home at The Close, Ardpatrick and would be impacted by the	

If you are not the legal owner, please state the name of the owner if available	proposed segregation of the estate. Cork City Council had a motion for the taking in charge of the estate in late 2022.
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8.1 / We confirm that the information contained in the application is true and accurate:

Signature: David Killeen

Date: 19.01.2024

CONFIDENTIAL CONTACT DETAILS

These details will not be made available to the public.

9. Applicant:

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

**The Development Management Section, Community, Culture & Placemaking
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.**

- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protections policy is available at <https://www.corkcity.ie/en/council-services/public-info/gdpr/>.

We request that you read these as they contain important information about how we process personal data.

The Development Management Section,
Community, Culture and Placemaking Directorate,
Cork City Council,
City Hall,
Anglesea Street,
Cork

19th January 2024

Re: Section 5 Referral for the Proposed Erection of a Fence and Gate at Land at Ardpatrick (formerly Susie's Field) between Assumption Road and Pope's Road, Lady's Well, Cork City

1.0 Introduction

A hand delivered questionnaire was circulated to residents of Ardpatrick on 22nd November 2023, prepared by Cork City Council's Rapid Coordinator, providing notice that the North East Local Area Committee intends to erect a **fence and gate at Ardpatrick**.

I am not proposing the development myself (**I am opposed to the segregation of the estate into two and the disruption or cessation of a pedestrian through route**), and I am therefore not party to the final details. As such, there are no drawings or definitive details of the proposal within this submission. I provide the indicative location of the proposal in Section 2 and further details in Section 3 of this letter.

I hereby seek a Section 5 Declaration from Cork City Council in respect of **the principle** of the above proposed development that would partition the residential development into two, **thereby restricting and controlling, and potentially prohibiting, access through Ardpatrick**, contrary to the aims and intention of the parent permission, as amended, and contrary to the principles of proper and sustainable development and the general aims and objectives of the Cork City Development Plan.

This Cover Letter explains the rationale for submitting the declaration sought, and is accompanied by the statutory fee of €80 in accordance with Schedule 10 of the Planning and development Regulations, 2001 (as amended) ('PDR').

The question is whether the proposed erection of a fence and gate is, or is not, exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) ('PDA') and the PDR, and whether such development would result in the segregation of the estate, and the control, and or prohibition, of access through Ardpatrick, and whether this would represent development that would materially alter the terms of the parent planning permission, as amended, and the interruption of a recreational amenity currently enjoyed by residents and members of the public.

I conclude that **the principle of erecting a fence and gate would materially alter the terms of the parent permission, as amended, by frustrating and hindering access to the publicly accessible communal open area and the established pedestrian route through the heart of the estate, and this would fail to satisfy the exemption criteria as set out in the PDA and PDR.**

2.0 Site Location and Context

Ardpatrick is located between Assumption Road and Pope's Road, at Lady's Well, east of the North City Link Road (N20), Cork City. Revenue House is to the north west and a military graveyard, now a park, to the north east.

The estate is a 72 No. residential development completed circa 2007 (Cork City Council's decision under Reg. Ref. 01/25226 and the subsequent grant of permission following a third party appeal to An Bord Pleanála under ABP Reg. Ref. PL.28.131123 refers). The application was amended at the appeal stage. The final grant of permission was issued in November 2003. The permission was subsequently amended under Reg. Ref. 05/29770. The development comprises 18 No. detached and 22 No. terraced houses at The Avenue and 32 No. semi-detached houses at The Close. A publicly accessible communal open space is at the heart of the estate and links The Avenue and The Close.

A footpath links the two sections of the estate and provides pedestrian priority for residents and the wider public, and a direct route through the estate that is unavailable to motorised transport modes. While the footpath was added a later date, **the right of way is well established and dates back to the removal of the temporary construction compound hoardings subsequent to the first occupation of the development.**

Cork City Council carried a motion for the taking in charge of the development in late 2022.

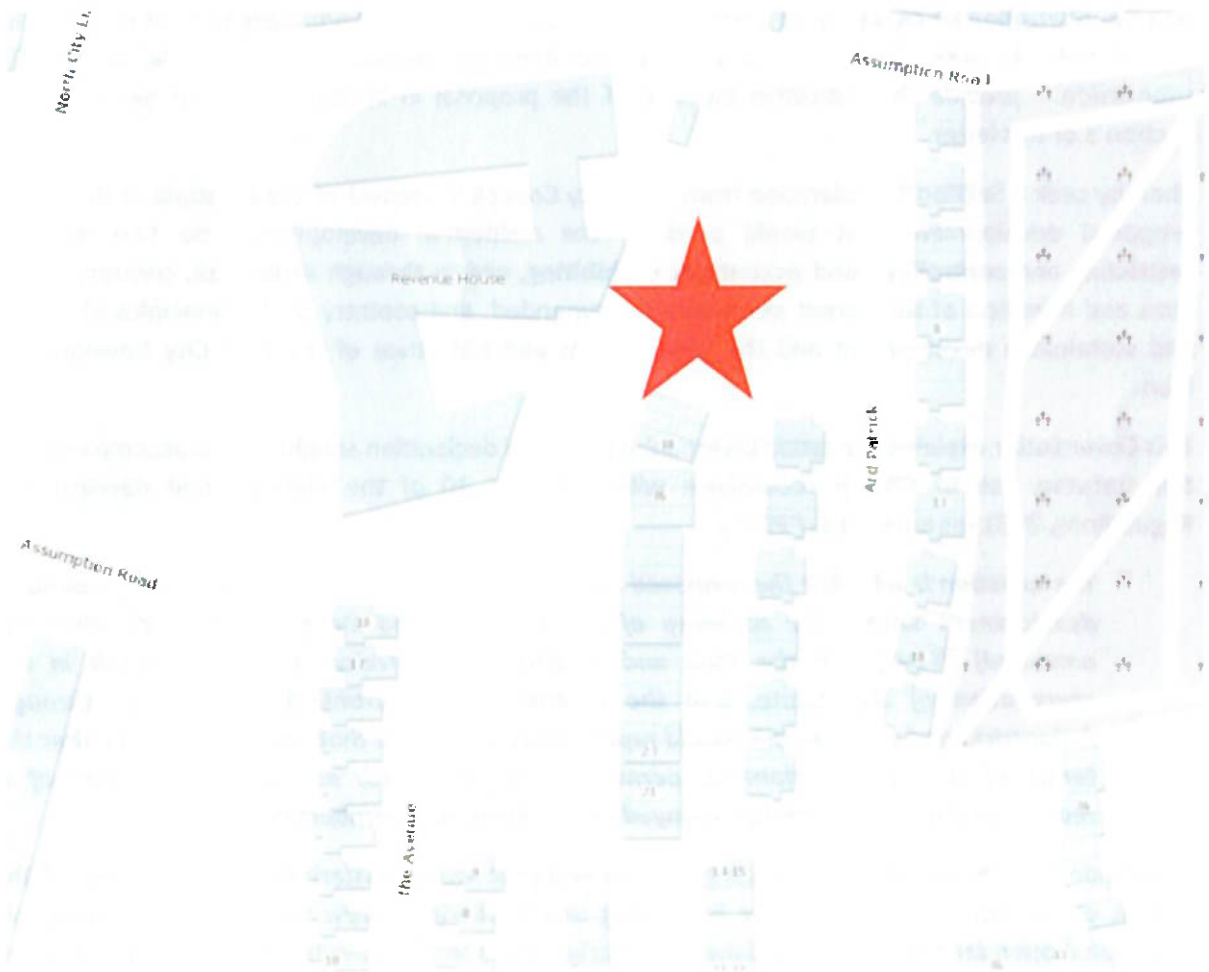


Figure 1: For Indicative Purposes Only – Ardpatrick Context with Red Star Indicating Approximate Area of Proposed Fence and Gate (Source: Extract from Cork City Council Planning Application Search Map, 2023, Marked with Red Star by Myself).

3.0 Proposal

Cork City Council's Rapid Coordinator provided notice that the North East Local Area Committee intends to erect a fence and gate at Ardpatrick.

It is understood from additional information provided from ward councillors that the partition would be erected to an area surrounding the turning head north of the terraced houses at Ardpatrick Avenue, to the south-west of the public open space, and to the east of the Revenue House fire exit assembly point.

The proposal was described in emails from one ward councillor as a 1.2 metre high bow topped fence that would terminate at the footpath, with no gate included. An amended proposal has since been **described as a 2 metre high fence with a gate** at the footpath end.

The rationale for partitioning the development is to **control and, or prohibit through access** in response to historical incidents of anti-social behaviour.

4.0 Assessment

Article 6 of the Planning and Development Regulations 2001 (as amended) sets out a number of classes of development that may be exempt from the requirement to obtain planning permission.

However, an important question to consider is **whether the proposal is a 'material' change** within the meaning of the legislation.

The erection of a fence and gate may appear 'de minimis' in the context of a 72 No. unit residential development. However, **the degree of change for residents** and members of the public, **and consequences** as a result of those works, and that development, **would be material** in this instance.

The proposal would:

- **Alter, control or prohibit access for residents** and members of the public, **to the estate's main recreational amenity area and access through the estate**, contrary to the concept of permeability.
- There would be **no appropriate mechanism to manage and ensure continued access for residents**, and the wider public **who have enjoyed the amenity for circa 16 years** (since 2007).
- The proposal would be **contrary to the conditions of the parent permission** (as amended, as explained further below).
- The perceived threat of future anti-social behaviour is a policing matter. Segregation is reactionary and disproportionate, and **the negative impacts of controlling and, or prohibiting through-access would outweigh the benefits of a partition** that could itself create a vulnerable new boundary that would restrict or prevent passive surveillance of pedestrians or police movement alike.
- The erection of a fence and gate at Ardpatrick would **affect the proper planning and sustainable development of the area in a material fashion over and above that of the Parent Permission**.

Restrictions on Exemption

Article 9 (1) of the Planning and Development Regulations 2001 (as amended) states that exemptions from the requirement to obtain planning permission do not apply under certain circumstances.

Development to which Article 6 relates shall not be exempted development for the purposes of the Act –

(a) If the carrying out of such development would –

(i) **Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.**

(x) **consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,**

(xi) **obstruct any public right of way,**

[My emphasis in bold]

In respect of article 9(1)(a)(i), a review of the parent planning permission for the site (ABP Reg. Ref. PL.28.131123) includes Condition 1 which states:

“1. The development shall be carried out in accordance with the plans and particulars lodged with the application, as amended by the drawings received by An Bord Pleanála on the 8th day of October, 2003, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.”

The approved plans and particulars never illustrated or described the partitioning of the development into two. The estate has been occupied for over 17 years (I myself being one of the original residents) and the amenity area and pedestrian through route has since, and continues to operate successfully. The proposed erection of a fence and gate would materially alter the approved plans and particulars of the parent permission and how the residential amenity area (used recreationally) and through route are used.

Further to this, Condition 12 required a **“management scheme...relating to the future maintenance of private open spaces, roads and communal areas”** to be agreed prior to the commencement of the development. The reason for the condition was to ensure future maintenance in the interest of residential amenity.

In addition, Condition 15 of the permission required that a landscaping scheme be agreed prior to the commencement of the development. The reason for that condition was in the interest of visual amenity.

Separately, the parent permission was amended under Cork City Council planning Reg. Ref. 05/29770. That permission, although referring more specially to alterations to the town houses within the wider development, had Condition 4 attached to its final grant of permission. That **pre-commencement condition required the submission and agreement of full details (including heights and finishes) of entire boundary treatments, including those of boundaries with property outside the site and with open space area.** The reason for the condition was in the interest of residential amenity.

The details of conditions 12 and 15, and Condition 4 of the later amendment, are unavailable on the planning portal. However, it is noted that the estate has been completed and occupied since 2007 to include all boundaries, and it was landscaped and has been maintained since completion. More

importantly, no partition was ever erected between The Close and The Avenue, and on the balance of probability, the intent was to maintain a through route and an open green space for the continued enjoyment of all residents. The amenities have also been enjoyed by the wider public in this time. The proposed erection of a fence and gate some two decades later would materially contravene the conditions attached to the parent permission, as amended, and such a development would fail to satisfy the exemption criteria as set out in the PDA and PDR.

In respect of article 9(1)(a)(x), and (xi), it is clear that the proposed erection of a fence and gate would disrupt and, or preclude access to amenities used for recreation and a pedestrian through route that has been habitually enjoyed by residents and the public without any disruption for well in excess of the 10 years preceding the proposal. The proposal would therefore obstruct a public right of way. For these reasons, the proposal would fail to satisfy the exemption criteria as set out in the PDA and PDR.

5.0 Conclusion

The principle of erecting a fence and gate at Ardpatrick would materially alter the terms of the parent permission, as amended, by frustrating and hindering resident's access to the publicly accessible communal open area and the established pedestrian route through the heart of the estate, which has been publicly accessible and enjoyed without hinderance since 2007.

As I am opposed to the restriction or cessation of unhindered access through the estate, I wish to make this request under Section 5 of the Planning and Development Acts 2000 (as amended) to establish that the erection of a gate and fence would partition Ardpatrick and this would constitute development, and this is not exempted development as it would fail to satisfy the exemption criteria as set out in the PDA and PDR.

Yours sincerely,

Donal Kelleher



Figure 2: For Indicative Purposes Only – Extract from Cork City Council Planning File 05/29770 for Ardpatrick Context with Red Star Indicating Approximate Location of Proposed Fence and Gate (Source: Cork City Council Planning Portal, 2023; Marked with Red Star by Myself).

Note – the as-built turning head for the avenue has been slightly amended (shorter and closer to the terraced houses, presumably through details agreed at the at the compliance stage, and a pedestrian footpath was subsequently completed to link The Close and The Avenue.



Figure 3: Indicative Location of Publicly Accessed Communal Open Space Marked in Red with Indicative Location of Proposed Fence and Gate Marked with Red Star (Source: Google Earth, 2023; Marked with Red Star and Polygon by Myself).