



An
Bord
Pleanála

Inspector's Report R307152-20

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Development	Construction of housing development comprising of 20 Residential Units (reduced to 18 units on foot of a further information request) and all associated works.
Location	Glencar Scotch, Letterkenny, County Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	19/50809.
Applicant	Gerard Kelly.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellants	Hunters Wood Residents Association.
Observers	None.
Date of Site Inspection	1 st July, 2020.
Inspector	Paul Caprani.

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1.0 Introduction

ABP307152-20 relates to a third-party appeal against the decision of Donegal County Council to issue notification to grant planning permission for the construction of 20 residential units (reduced to 18) in the townland of Glencar Scotch on the outskirts of Letterkenny in County Donegal. The grounds of appeal argue that the proposed development is grossly excessive in size and would have significant and injurious impacts on neighbouring properties.

2.0 Site Location and Description

- 2.1. The townland of Glencar Scotch is located in the north-western environs of Letterkenny approximately 2 kilometres from the town centre. The subject site comprises of a greenfield site located on the west side of a local radial route which runs north-westwards from the town centre in the direction of Kilmacrenan. The subject site is roughly rectangular in shape and is bounded on all sides by existing dwellings. The dwellings immediately adjacent to the subject site comprise of relatively large detached dwellings on generous rectangular sites. The subject site backs onto Chestnut Grove, a higher density development comprising of semi-detached dwellings set out around cul-de-sacs on smaller plots. The site is located directly opposite a small residential cul-de-sac known as Hunters Wood which comprises of 8 semi-detached dwellings facing north-westwards onto an area of open space.
- 2.2. A small cul-de-sac lane/driveway is located along the north-western boundary of the site and provides access to two detached dwellings located on relatively large plots of land. The surrounding area is characterised by suburban residential estates comprising of both detached and semi-detached dwellings. The dwellings facing onto the access road in the immediate vicinity of the site appear to be more mature dwellings dating from the 1960s, 70s and 80s whereas the higher density residential estates in the wider area appear to be more recent in origin.

- 2.3. The site itself is under grass and scrubland with a number of stands of semi mature trees. An ESB power line traverses the site. The site incorporates a notable downward slope from north to south.

3.0 Proposed Development

- 3.1. Planning permission was originally sought for the construction of 8 semi-detached dwellings and 12 apartments on the subject site. The apartment blocks originally comprised of 2 no. three-storey structures each accommodating two apartments at each level. The apartment block to the front of the site was reduced facing onto the access road was, by way of additional information, reduced to 2-storeys and the number of units within it was reduced from 6 to 4. One of the blocks is to be located at the entrance to the site while the other block is located to the rear (south-west of the site). Designated surface car parking spaces are provided for each of the blocks. Between both blocks it is proposed to construct four pairs of semi-detached two-storey dwellings which likewise face south-eastwards onto the internal access road. Each of these dwellinghouses incorporate rear backgardens between 8 and 16 metres in length and off-street car parking to the front of the dwelling as well as an incidental area of open space to the front of each dwelling.
- 3.2. The area to the front of each apartment block incorporates a hard landscaped area and an area of landscaped open space is located to the rear of each apartment block. A formalised play area including playground equipment is proposed to be located to the front of the apartment block to the rear of the site, located in the south-eastern corner of the site. It is proposed to construct a 1.8 metre high picket fence around the boundary of the site and landscaping is also proposed around the boundary. The landscaping is to comprise of hedging, cherry blossoms, sycamore and mountain ash trees.
- 3.3. The semi-detached dwellings comprise of three-bedroomed units and rise to a ridge height of 9 metres. The rear apartment block rises to a ridge height of 11 metres and the roadside apartment block rises to 9 metres in height. The topography of the site incorporates a fall north-east to south-west and as a result it is proposed to incorporate some cut and fill in order to create a more level topography across the site.

3.4. In terms of external finishes, both the semi-detached dwellings and the apartment blocks are to incorporate a slate pitched roof and a smooth render nap plaster finish on the external elevations. The proposed entrance block on the front elevation is to incorporate extensive glazing with Liscannor stone cladding. It is also proposed to provide a zinc cladding around the proposed dormer window elements at roof level.

4.0 Planning Authority Decision

4.1 Decision

4.1.1. Donegal County Council issued notification to grant planning permission subject to 29 conditions.

4.2 Documentation Submitted with the Planning Application

4.2.1. The application was accompanied by drawings, public notices, planning application fee and planning application form etc. In addition, the application was accompanied by:

- A Storm Drainage Report. It is stated that there is an attenuation tank requirement of 96.33 cubic metres required for the site in the event of a 1:100 year storm event.
- A Traffic and Transport Statement. This Statement indicates that the proposal will generate approximately 50 – 60 vehicle movements per day.
- The application was also accompanied by a Part V agreement document which sets out the preferred option of the transfer of Unit No. 1 (two-bed ground floor apartment) and Unit No. 14 (three-bed semi-detached house) to the Planning Authority for the purposes of complying with the provisions of Part V.

4.3 Planning Authority's Assessment

4.3.1. A report from the Executive Engineer of the Building Control Department recommended three conditions to be attached to any grant of planning permission.

- 4.3.2. A report from Irish Water states that there is no objection subject to two standard planning conditions.
- 4.3.3. A number of observations were submitted objecting to the proposed development from residents in the surrounding area. The contents of these observations have been read and noted
- 4.3.4. The initial planner's report assesses the proposed development in terms of:
- Principle of Development.
 - Siting, Location and Design/Amenity.
 - Traffic Safety/Access.
 - Public Health.
 - The Provision of Childcare Facilities.
- 4.3.5. The planner's report recommends further information in relation to the following:
- The applicant to submit a design brief and a design statement in accordance with Policy UB-P-7 of the County Development Plan.
 - The applicant to submit revised apartment design plans which provide for a reconfigured and traditional gable end pitched roof with two-storey apartment block which achieves a dual frontage which addresses the public access road together with no external balcony features (a feature of the original proposal submitted to the planning authority).
 - Further details and revisions in relation to open space provision.
 - Comprehensive landscaping proposals for the entire site.
 - Further details in relation to public lighting and footpath provision.
 - The applicant is to demonstrate that adequate childcare facilities exist in the locality.
 - Further details in relation to vision splays at the entrance.
 - Details of a comprehensive construction and traffic management plan.
 - Details of a series of cross sections of the site.
- 4.3.6. The request for additional information was dated 18th July, 2019.

4.3.7. Further information was submitted on 19th December, 2019. It comprises of the following:

- A Planning Design Statement which sets out details of the site context, the proposed development and the landscaping design strategy.
- A revised design proposal for the apartments was submitted. Both apartment buildings have been amended for design consistency. The revised proposal includes a pitched roof with dual aspect elevations as requested. The revised building results in a more appropriate design and taken in conjunction with the omission of balcony features reduces any concerns with regard to overlooking of third-party properties. A high-quality landscaping proposal is also submitted.
- The open space provision has been revised accordingly and is detailed in the further information response. Details of public lighting and a 2 metre wide footpath to be provided along the entire site frontage and roadside boundary is submitted.
- The applicant has had liaisons with Donegal County Childcare Committee and they have advised that three pre-school services and an after-school service are available in the local area.
- A detached drawing clearly illustrates how 65 metre vision lines can be provided at the vehicular entrance and that the maintenance of vision lines do not require any third party consent.
- A comprehensive construction and traffic management plan for the proposed development is also attached.
- Finally, details of cross-sections through the site are submitted in three separate drawings contained in the further information response.

4.3.8. On 16th January, 2020 Donegal County Council requested clarification of additional information in respect of two matters.

- The applicant was requested to submit two copies of revised apartment design plans to include the following:

- A reduced two-storey traditional gable end pitched roof apartment block with a ridge height reduced from 10.2 to 9 metres maximum.
- The omission of Apartments 5 and 6 to be replaced by a single two-bedroomed apartment in reduced/reconfigured attic space.
- Reduction in height of three-storey front elevation project to two-storey only complete with traditional vertical emphasis in terms of fenestration.
- The applicant to submit two copies of a revised site layout plan detailing the omission of the proposed apartment block to be replaced with revised apartment plans in accordance with Point 1 of the additional information request re-orientated 90 degrees in an anticlockwise direction to visually address the adjoining public road with a minimum building setback of 10 metres from the central line of the adjoining public road together with all required communal car parking and storage areas to be provided to the rear.

4.3.9. Further information was submitted on behalf of the applicant on the 28th January, 2020. The further information included the re-orientation of the front apartment block so as it fronts onto the public road and presents as a two-storey structure with the number of apartments reduced from six to four with each of the apartments containing two bedrooms. The overall number of units was therefore reduced from 20 to 18.

4.3.10. A further planner's report dated 10th February, 2020 requested the applicant to submit revised public notices. Revised public notices were published on 6th March, 2020.

4.3.11. A number of third-party observations objecting to the proposed development were submitted reiterating objections to the revised scheme. The contents of these submissions on the revised scheme have been read and noted.

4.3.12. The final planner's report recommended a grant of planning permission for the proposed development subject to 29 conditions.

5.0 Planning History

No appeal files are attached to the current application and appeal. The original planner's report makes reference to one application on the subject site where full planning permission was granted for 8 dwellings and 1 apartment block containing four apartments and all associated works granted in January, 2009.

6.0 Grounds of Appeal

6.1. A combined appeal was submitted on behalf of the Hunters Wood Residents Association and other residents in the vicinity. The grounds of appeal are set out below.

- The number of units permitted by the Planning Authority is almost twice that previously permitted in 2009.
- The proposal is also contrary to Policy Provision UB-0-4 which seeks to promote quality urban design in residential development and to ensure that it is integrated with existing urban development.
- There are no existing high apartment blocks or high-rise buildings in the immediate vicinity. It is argued that the proposal fails to protect the architectural, cultural and historic value of residential communities within and on the edge of Letterkenny Town Centre as required in Policy LK-H-P-3.
- It is respectfully suggested that a decision on the current application may be invalid due to a disputed boundary issue and it is understood that the Council may not have been advised about this issue. It is argued that the applicant has no authority to utilise, develop or interfere in any way with existing physical boundaries, fences or hedges as part of the current application.
- The scale, height, density and design would have an overbearing negative visual impact and would be seriously injurious to the setting, amenity and privacy of neighbouring properties. It would set a potentially negative precedent that would seriously damage the character of the Glencar-Scotch area. The density and excessive scale is incongruous with the prevailing character of the area. It is suggested that the rear apartment block (Units 13 to 18) should be replaced by semi-detached dwellings.

- Houses located proximate to the subject site will experience significant overshadowing and loss of natural light. It is suggested that the Board should carefully review this issue.
- It is argued that the proposal seriously breaches the existing privacy of houses surrounding the site. One family home is located a mere 6 to 7 metres from the development boundary on the southern and eastern aspects of the development. The proposal will result in a serious breach of privacy due to overlooking of bedrooms, bathrooms and other habitable rooms as well as amenity areas in the garden which can currently avail of exclusive levels of privacy.
- With regard to the apartment block to the front of the site, it is argued that the extensive glazed element of this apartment will overlook the back gardens of the Hunters Wood housing estate. The design of the proposed development does not afford adequate privacy for the occupants of the building or adjacent residential properties.
- The proposal contravenes human rights provisions set out in the Irish Constitution, the European Convention of Human Rights and the EU Charter of Fundamental Rights which highlight a person's right to the peaceful enjoyment of all their possessions which includes their home and other land. And that a person has the substantive right to protect their private and family life.
- It is argued that the proposal would have a detrimental impact on the visual amenity of the surrounding area as there are simply too many largescale buildings for this constrained site.
- It is argued that the internal communal play area, being located a distance of approximately 3 metres from a private garden needs to be excluded or relocated within the scheme. It is suggested that the communal play area will result in excessive noise pollution in the context of the surrounding private amenity area.
- It is suggested that the proposed boundary would be required to be 1.8 metres high in order to ensure any privacy for surrounding residents. It is

suggested that fencing in some areas would need to be in the order of three metres in height in order to give some privacy to adjoining residents.

- The proposal will give rise to accommodating between 80 and 100 additional residents and this would increase pedestrian and vehicular traffic which in turn would give rise to potential road safety and security issues.
- The proposal would also give rise to increased noise pollution from general activities (including dogs barking) within the proposed housing estate which will have a negative effect on existing residents' quality of life and amenity. There will be a substantial increase in vehicular trips to and from the site which will also give rise to increasing noise and air pollution particularly during peak times.
- Finally, the grounds of appeal express deep concerns in relation to the displacement and repositioning of any ESB lines across the site and the construction and displacement of any sewage and storm water facilities including the position of the attenuation tank. It is suggested that local homes could be seriously impacted by smells and leakage from these waste systems together with the generation of domestic waste and collection of same from the site.
- In the event that the appeal proves unsuccessful, An Bord Pleanála is requested to use its power to enforce the hours and operation of construction activity on site.
- A series of photographs are attached to the grounds of appeal highlighting concerns in relation to overlooking

7.0 Appeal Responses

7.1. Donegal County Council's Response to the Grounds of Appeal

- 7.1.1. A response was received on 22nd June, 2020. It is noted that amongst the issues raised by the appellant some are not considered material planning considerations and some of which raise civil matters such as title and land boundary disputes.
- 7.1.2. With reference to Policy LK-H-P-3 this policy seeks to protect the architectural, cultural and historic value of residential communities that are identified as 'long

established residential areas'. The Board is advised that Hunters Wood or any of the residential properties identified by the appellant are not designated "long established residential areas" as indicated on Map 12.1B of the Development Plan.

- 7.1.3. Originally a density of 34 dwellings per hectare was proposed. However, this was reduced by way of further information to 30 dwellings per hectare. In light of national, regional and local policy objectives which seek to ensure compact growth within defined settlement envelopes, it is not considered that the proposal constitutes excessive density. In fact, a density of less than 30 dwellings per hectare would be considered an inefficient use of land. In assessing the application, the Planning Authority has had regard to the density and spatial pattern of development in the immediate and adjoining areas.
- 7.1.4. In terms of overshadowing, loss of light and overlooking, it is argued that dwellings in the surrounding area are located a distance of 25 to 30 metres from the proposed units and the rear gardens of Hunters Wood are between 30 and 45 metres away from the two-storey apartment block fronting onto the road. Thus, the proposal is not anticipated to have any adverse impacts in terms of overshadowing or loss of light. With regard to existing properties to the south and south-west of the subject site, there is a distance of 12 to 15 metres between the side elevation of the existing units to the south. However, there are no habitable windows on the side elevation of the existing properties. This, together with the boundary treatment, will ensure that there are no adverse impacts on surrounding amenity.
- 7.1.5. Reference is also made to the regional, spatial and economic strategy for the northern and western region. It notes that for Letterkenny, an overall population growth target of 40% by 2024 is set. This involves the provision of an additional 3,000 to 4,000 residential units within Letterkenny to facilitate this growth. There is increasing emphasis within the regional guidelines to consolidate existing neighbourhoods and Glencar Scotch on which the site is located is identified as one such neighbourhood for consolidation. The proposal if granted would assist to facilitate compact growth. Reference is also made to various local planning policies contained in Chapter 12 of the County Development Plan which aim to achieve quality urban housing and to adequately accommodate future population growth. Various policies as they relate to the subject site are set out in the Planning Authority's response.

7.2. Response on behalf of the Applicant

7.2.1. A response was received from McCullagh Architecture and Surveying on behalf of the applicant.

7.2.2. It states the following:

- The applicant is satisfied that the Planning Authority in determining the application had detailed regard to the submissions and objections submitted. The applicant's response to the additional information request and the clarification of additional information were well considered having due regard to house design and spatial planning.
- The number of units permitted are justified by the demand for housing as there is a distinct lack of housing throughout all towns and cities and the State is under immense pressure to provide an adequate supply of suitable housing.
- It is not accepted that the design of the apartments is by any means high-rise. The blocks comprise of structures which are 2.5 storeys to the rear and two storeys to the front. It is considered that the proposal constitutes a low rise and low-density development considering its location and the availability of services within an established residential area. The subject site is not located within a long established residential area as designated in the development plan and suggested in the grounds of appeal. This designation relates to residential communities within the town centre and the edge of Letterkenny Town.
- In light of national, regional and local planning policies it could be reasonably argued that the density may not achieve maximum potential and use of serviced lands. In this regard it cannot be reasonably argued that the proposal constitutes high density or is of excessive scale as suggested in the grounds of appeal. The proposal represents an appropriate response in an area where there is a high demand for housing.
- With regard to the issue of overshadowing and overlooking, it is stated that given the separation distances between established and proposed units, these distances are well beyond acceptable standards in an urban residential

area. The proposals therefore offer no risk to overlooking and overshadowing. Properties to the east, south-east and north-west are located between 30 and 50 metres from the proposed units. Dwellings to the south and south-west on Chestnut Grove have no habitable windows on the gable ends which directly overlook the site.

- Any increase in population and traffic are considered negligible when one considers that the adjoining road constitutes a distributor route between Letterkenny Town Centre and several largescale housing developments in the north-west environs of the town.
- All services including ESB and public sewer are considered to be more than adequate to cater for existing and proposed development and any connection into these services shall be completed in accordance with necessary standards and site development works. No concerns have been raised by Irish Water or any of the internal Local Authority Departments with regard to services.
- The proposed development is fully in accordance with national, regional and local planning policies which seek to create greater compact growth within existing urban areas.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the County Donegal Development Plan 2018-2024. The subject site is located on lands zoned “established development within the plan with the zoning objective to *“conserve and enhance the quality and character of the area, to protect residential amenity and to allow for development appropriate to the sustainable growth of the settlement”* .
- 8.2. Part C of the development plan sets out the objectives and policies for the various towns of Donegal. The policies and provisions pertaining to Letterkenny are set out in Chapter 12. The Council’s core strategy in relation to housing in Letterkenny is to ensure that adequate provision is made to accommodate the projected growth in persons of an additional 4,190 persons by 2024. Policy LK-H-01 seeks to identify the appropriate quantum and range of lands to meet future housing need in Letterkenny including social and affordable housing need. Consideration will be given to

appropriate proposals for development within established development areas and within the town centre. All proposals shall be subject to relevant material considerations, relevant policies in the plan and other regional and national guidelines as well as relevant environmental designations.

- 8.3. Policy LK-H-P-3 states it is the policy of the Council to protect the architectural, cultural and historic value of residential communities within and on the edge of the town centre that are identified as “*long established residential areas on Map 12.1B that accompanies the plan*”.
- 8.4. More general housing policies are contained in the County Development Plan in Chapter 6.
- 8.5. Policy UB-P-7 states that it is the policy of the Council that development proposals for new residential developments in settlements shall demonstrate that the design process, layout, specification, finish of the proposed development meets the guidelines set out in the following key government publications.
- *Quality Housing for Sustainable Communities Best Practice Guidelines for Delivering Homes in Sustainable Communities.*
 - *Sustainable Urban Housing Design Standards for New Apartments 2007.*
 - *Guidelines on Sustainable Residential Development in Urban Areas (2009).*
 - *Urban Design Manual, A Best Practice Guide, a companion document to the Planning Guidelines on Sustainable Residential Development in Urban Areas 2009.*
 - *Sustainable Urban Housing Design Standards for New Apartments 2015.*
- 8.6. UB-P-11 states that proposals for residential development shall provide a mixture of house types and sizes in order to reasonably mix the requirements of different household categories within the plan area including those groups with particular special needs. The Council will seek to achieve a balance of housing stock to meet the needs and aspirations of people residing within the plan area.
- 8.7. UB-P-12 it is the policy of the Council both to protect the residential amenity of existing residential units and to promote design concepts for new housing that ensures the establishment of reasonable levels of residential amenities.

- 8.8. UB-P-13 states that multiple residential developments shall in general:
- (a) On greenfield sites include a minimum of 15% of the overall site area reserved as public amenity area. In other cases, such as large infill sites and brownfield sites, include a minimum of 10% of the overall site area reserved as public amenity area.

9.0 Environmental Designations

- 9.1. The nearest designated Natura 2000 site is the Lough Swilly SAC (Site Code: 002287) which is located approximately 3 kilometres to the south-east of the subject site. The Lough Swilly SPA is located approximately 3.6 kilometres from the subject site.

10.0 EIAR Screening Determination

- 10.1. On the issue of environmental impact assessment screening I note that the relevant classes for consideration are classes 10(b)(i) construction of more than 500 dwelling units and class 10(b)(iv) urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of the built up area and 20 hectares elsewhere. Having regard to the size of the site at 0.59 hectares and the number of units to be provided at 18 both are considerably below the thresholds which would require a mandatory EIAR. With regard a subthreshold EIAR I note the modest nature and scale of the proposed development and the location of the development on an urban greenfield site together with the characteristics and likely duration of potential impacts that the proposal is not likely to have significant effects on the environment and that the submission of an environmental impact statement is not required.

11.0 Planning Assessment

I have read the entire contents of the file, visited the subject site and its surroundings and have had particular regard to the issues raised in the grounds of appeal and the Planning Authority and applicant's response to the said grounds of appeal. I consider the pertinent issues in determining the current application and appeal are as follows:

- Density, Scale and Height.
- Overshadowing and Loss of Light.
- Overlooking and Loss of Privacy.
- Other Issues
- Boundary Issues/Title Disputes.

11.1. **Density, Scale and Height.**

11.1.1. The grounds of appeal argue that the proposed development is of excessive scale, density and height on such a confined site and is not reflective of the prevailing lower density character of development in the vicinity. It is also argued that the proposed development represents a significant departure in terms of density and scale to that previously granted on site in 2009 and that the proposal in this instance will set an undesirable precedent for similar type high density development in what is essentially a low density suburban area of Letterkenny.

11.1.2. The proposal seeks to construct 18 residential units (reduced from the original proposal of 20 residential units on the subject site). The site has an area of 0.59 hectares. This results in a density of 30.5 units per hectare. The Board will note that since the granting of the previous planning permission for 12 units in 2009, there has been a significant and material shift in policy emphasis in relation to residential density in urban areas. Current national land use strategy place significant emphasis on the need to develop sites within urban areas at more sustainable densities. The site in question can be best described as an intermediate urban location as per the Sustainable Urban Housing Design Guidelines for Planning Authorities on the basis that the site is located within 2 kilometres of Letterkenny Town Centre and therefore in close proximity to various centres of employment throughout the town. The site can also avail of public infrastructure in terms of roads, public lighting, sanitation, and water supply etc. These locations are generally deemed to be suitable for higher density development that may, according to the guidelines, (a) wholly comprise of apartments or alternatively medium high-density residential development which can include some elements of apartments. The guidelines suggest that such intermediate sites should seek to incorporate densities of greater than 45 dwellings per hectare. The proposed development in this instance falls well short of this minimum standard.

But I accept the appellants' argument that to some extent the proposed development should reflect prevailing densities within the area.

- 11.1.3. In light of current strategic guidelines, it is inappropriate to suggest that any development on the subject site should reflect the prevailing density in the immediate environs which amounts to approximately 3 to 10 units per hectare.
- 11.1.4. Furthermore, the local area plan for Letterkenny (Chapter 12 of the County Development Plan) and the Regional Planning Guidelines suggest that between 3,000 and 4,000 residential units are required in Letterkenny. The core strategy directs 30% of the projected growth of the county to Letterkenny during the life of the plan (to 2024) and this provides for an additional population of 4,190 people.
- 11.1.5. The National Planning Framework seeks to encourage more people, jobs and activity to be located within existing urban areas. The subject site is ideally situated in this context.
- 11.1.6. On the basis of the above assessment I cannot agree with the grounds of appeal that the proposed density in this instance is excessive. If anything, it could be reasonably argued, based on the Sustainable Urban Housing Design Guidelines for Planning Authorities, that the density in this instance should be higher on the subject site given its proximity to the town centre. However, having regard to the prevailing density in the immediate area of the subject site and the suburban location of the proposed development a density of 30 units per hectare might be regarded as an appropriate compromise.
- 11.1.7. With regard to the height of the buildings proposed, it is acknowledged that the prevailing height of buildings immediately contiguous to the site is one and half storeys and that dwellings in the wider area such as those associated with Hunters Wood directly opposite the site and Chestnut Grove to the south-west of the site, are predominantly two-storey. The proposal in this instance does not represent a significant departure from the prevailing height in the area. The height of the proposed apartment block facing onto the public roadway to the front of the site has been reduced to two-storeys and is less than 10 metres in height. The apartment block to the rear, which is set back from the public road, rises to three-storeys in height with a ridge height of 10.5 metres and this cannot be considered excessive for an urban area and this building is set back a significant distance from the public

roadway and surrounding dwellings and therefore will not be incongruous or inappropriate in terms of height. To suggest that the construction of a three-storey building within an urban area which is one storey above the prevailing height of the closest dwellings to the south-west is not tenable in my view particularly having regard to strategic guidelines which seek to increase density within infill sites in order to achieve more compact growth and make more efficient use of available public infrastructure. The provision of a three-storey structure cannot be regarded as high rise as suggested in the grounds of appeal. The Board will also note that the apartment unit to the rear of the site incorporates the top floor within the roof pitch of the building thereby the building presents as being ostensibly two storeys instead of three storeys when viewed from the public realm.

- 11.1.8. On the basis of my assessment above I consider the proposed development adequately integrates with existing urban development in the immediate vicinity and therefore does not contravene Policy UB-04 as suggested in the grounds of appeal.
- 11.1.9. In relation to the argument that the proposed development contravenes Policy LK-H-P-3 which seeks to protect the architectural, cultural and historic value of residential communities within and on the edge of the town centre, both the Planning Authority and the applicant in the response to the grounds of appeal point out that this particular policy does not relate to the site in question. Having consulted the development plan and the land use zoning map associated with Letterkenny, I can confirm to the Board that the subject site is not located within a designated “long established residential area” as suggested in the grounds of appeal.
- 11.1.10. With regard to the housing mix proposed on the subject site, the provision of one and two bedroom units within the apartment block are in my view altogether reasonable. The Sustainable Urban Housing Design Standards for New Apartments highlights the need to provide a mix of apartment types that better reflects contemporary household formation and housing demand patterns particularly to cater for the demand for small units. The same guidelines note that demographic trends indicate that about two-thirds of households added to those in Ireland since 1996 comprise of one and two bedroomed units yet only 21% of dwellings completed since then comprise of apartments-type development. The 2006 census indicates that one and two people households now comprise the majority of households and this trend is set

to continue. On this basis it is both necessary and desirable to provide a higher proportion of one and two bedroom units within residential schemes.

11.2. Overshadowing and Loss of Light

- 11.2.1. It is inevitable that some increases in overshadowing will occur as a result of the development of the site. This is likely to occur particularly during late Autumn and Winter months where the levels of shadow casting are likely to extend beyond the boundary of the site and into adjoining lands. It is therefore reasonable to expect some marginal increases in overshadowing as a result of developing any infill site. Notwithstanding this point, the Board will note that the largest building on the subject site extends to just over 10 metres in height. Furthermore, there is generous separation distances between the proposed buildings and adjacent dwellings in the vicinity. Buildings to the north-east of the site at Hunters Wood and adjoining the site to the south-east and north-west are all in excess of 25 metres from the proposed apartment block to the front of the site which is a mere two storeys in height. The Board will note that distances between existing suburban dwellings in the area do not attain such generous separation distances
- 11.2.2. The closest residential units to the proposed layout are the units at Chestnut Grove to the south and south-west of the site. The separation distance between the proposed apartment block and the gable end of the dwelling to the immediate west of the site is estimated to be approximately 12 metres. However, the gable ends of the unit in question does not incorporate any windows and this building will continue to receive adequate levels of sunlight penetration as it faces southwards onto the internal access road and therefore will not be affected by any appreciable extent by the proposed three storey apartment block.
- 11.2.3. While some of the buildings may encroach on surrounding gardens in terms of overshadowing, given the height of the buildings involved together with the separation distances, it is extremely unlikely that, even at mid-winter, shadow casting will extend to any of the surrounding buildings in the vicinity.

11.3. Overlooking and Loss of Privacy

- 11.3.1. Similar arguments apply in relation to overlooking. The proposed buildings on the subject site are primarily two storey and incorporate significant and generous separation distances between the windows serving habitable rooms for both the

proposed units and existing units on site. The dwellings to the north-west of the site are in the order of 50 to 55 metres from the rear windows of the proposed semi-detached units and are between 40 and 60 metres from the proposed apartment blocks. These are very generous separation distances and will not result in any significant overlooking. With regard to the existing dwellings to the south-east of the site the two dwellings in question are likewise in excess of 30 metres from the windows serving the front elevation of the proposed semi-detached units and are c.40 metres from the proposed apartment blocks. Again, this separation distance is more than acceptable in my view and the fact that it is proposed to plant mountain ash along the south-eastern boundary of the subject site will further mitigate against potential overlooking.

- 11.3.2. With regard to the houses and the rear gardens of the houses associated with Hunters Wood, again the Board will note that there is a separation distance of c.25 metres between the proposed apartment block and the gable end of the closest dwelling at Hunters Wood. The Board will further note that only one small window is inserted into the south-western gable of the nearest dwelling at Hunters Wood. The proposal may give rise to some level of overlooking of the rear gardens of the dwellings at Hunters Wood. However, these gardens do not enjoy large levels of privacy due to the proximity of the public road and the relatively low wooden picket fence that runs along the roadside boundary. The Board will note from the photographs attached to the grounds of appeal that the rear gardens of the existing dwellings are more readily overlooked by the adjoining units within Hunters Wood than is likely to occur from the provision of a two-storey apartment block 25 metres away on the other side of the public road. The amount of overlooking that does occur in the case of adjoining rear gardens is adequately illustrated in Figure No. 2 attached to the grounds of appeal.
- 11.3.3. With regard to the issue of overlooking at the south-western corner of the site, as the applicant points out in the response to the grounds of appeal, the proposed three-storey apartment block will look onto the gable end of the adjoining units at Chestnut Grove and these gables incorporate no windows. The potential for overlooking is therefore minimised and acceptable in my view.
- 11.3.4. As in the case of overshadowing the development of the subject site will enable some increases in potential overlooking of adjoining lands. However, this is an

inevitable consequence of developing an infill site surrounded by development. In this instance however I consider the potential for any increase in overlooking to be acceptable when balanced against the needs of providing additional housing in accordance with national and local policy for the town of Letterkenny.

11.4. Boundary Issues/Title Disputes

11.4.1. The grounds of appeal argue that there is a dispute in relation to boundary issues.

These disputes relation to access to a driveway and more generally in respect of land title relating to the site which must be resolved prior to the commencement of development. On this basis it is suggested that the planning application may be invalid due to this disputed land title. The Planning Authority in determining the application, has de facto validated it. The Development Management Guidelines issued by the Department of the Environment, Heritage and Local Government in June, 2007 are clear and unambiguous in stating that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land. These are ultimately matters for resolution in the Courts. In this regard it should be noted as per Section 34(13) of the Planning and Development Act that a person is not entitled solely by reason of a permission to carry out a development. Therefore, any disputes relating to boundaries and land are a matter for the Courts and do not themselves preclude the competent authority from determining the application.

11.4.2. The grounds of appeal also suggest that the proposed development may if permitted go ahead contravene the Irish Constitution, the European Convention of Human Rights and the European Charter of Fundamental Rights. I have argued above that the proposed development would not have an unacceptable impact on the amenity of adjoining residential areas. In granting planning permission the development will contribute to much needed housing provision in accordance with national and local policy at appropriate densities which should not impinge to any material extent on surrounding residential amenities does not in my view contravene any of the legislation pertaining to human rights referred to.

11.5. Other Issues

11.5.1. Noise from the External Play Area

The proposal incorporates an external playground area located at the southern boundary of the site which is in close proximity to the existing house at the south-eastern corner of the site. The grounds of appeal suggest that the noise emanating from this external play area will have significant impacts on surrounding residential amenity. The provision of a dedicated play area within the site is an important amenity for the residents of the proposed development. When weather permits it is likely that children will congregate and play in external play areas regardless of whether or not a formalised play area is provided. The provision of an area of open space which incorporates an informal kick about area is likely to generate similar noise levels than that associated with the playground in question. It is unreasonable to suggest that noise emanating from children using external play areas should be prohibited on the basis that it may impact on surrounding residential amenity. Similar noise levels are likely to be generated from children congregating and utilising private amenity spaces such as rear gardens as much as that associated with the playground area and on this basis such an argument does not constitute reasonable grounds for refusal.

Construction Noise

With regard to noise generation during the construction period, it is likely that noise levels will increase over and above the residual levels experienced in a typical suburban area. However, any such noise levels will be temporary in the short-term and will not give rise to any significant long-term amenity issues.

Fence Height

With regard to the suggestion that the height of the fence maybe inadequate for the purposes of protecting surrounding residential amenity, I note that fences of similar height and type are used in schemes surrounding the site including Hunters Wood and Solomon's Manor to the north of the site. The provision of 1.8 metre high wooden picket fencing is in my view appropriate considering that it will be augmented by significant levels of perimeter planting. I have already argued above that the proposal will not result in any significant levels of overlooking and therefore I do not consider it necessary to increase the height of the fencing along the perimeter of the site. Should the Board decide otherwise it can always impose a condition

requiring the fencing to be increased in height to 2, 2.5 or even 3 metres as suggested in the grounds of appeal. However, I do not consider that such a condition is either warranted or justified in this instance.

Traffic and Trip Generation

The grounds of appeal suggest that the proposed development will give rise to significant pedestrian and vehicular generation which will also adversely affect the amenity of existing residents in the vicinity. According to TRICS data, it is estimated that each unit would generate approximately 2.2 trips on average per day giving an overall trip generation of approximately 40 trips to and from the development per day (the Board will note that the Transport Assessment submitted with the application suggests that the trips could be relatively higher at 50 to 60 trips per day). The greatest level of trips is likely to occur during the AM and PM peak where it is estimated that an average of 7 to 8 trips will occur between 8 a.m. and 9 a.m. and a similar number of trips between 5 p.m. and 6 p.m. and 6 p.m. and 7 p.m.

The existing distributor route serves a large number of residential dwellings in the vicinity of the site and I consider that the additional traffic generated by the proposed development would have a negligible impact on the capacity of the road and likewise would have a negligible impact on surrounding residential amenity in terms of noise generation etc.

I also note that the traffic and access arrangements were the subject of a request for additional information and on the basis of the additional information submitted, I am satisfied that the proposed development is acceptable from a road safety point of view and will not result in a traffic hazard.

11.5.2. Displacement of Public Infrastructure

The grounds of appeal express concerns in relation to any displacement or repositioning of ESB lines, sewage and storm water facilities and the provision of attenuation tank which it is argued may not comply with planning requirements. It is suggested that local homes could be seriously impacted by smells and leakage from these waste systems. All works to services to be undertaken on site will be in accordance with appropriate protocols and health and safety requirements as required under law. All works to these services shall be completed in accordance with necessary standards and site development works. It would therefore not be

reasonable in my view to refuse planning permission purely on the basis that some accident may occur which could impact on the amenity or services of adjoining residential areas.

Visual Impact

11.5.3. Concerns are expressed that the proposed development would have an unacceptable visual impact. The subject site constitutes a greenfield suburban infill site surrounded by suburban residential development. The proposal is surrounded by recently developed residential estates in an area that attracts no specific scenic or high amenity designation. The proposed development in my view would represent an extension of the existing residential character of the area and would be predominantly two-storey in nature integrate appropriately in visual terms with the surrounding area. On this basis I do not consider that the proposed development in any way adversely impacts on the visual amenity of the area as suggested in the grounds of appeal

12.0 Appropriate Assessment

The subject is not located within or contiguous to a designated Natura 2000 site. The nearest Natura 2000 site is the Lough Swilly SAC (Site Code: 002287) which is located approximately 3 kilometres to the south-east of the subject site while the Lough Swilly SPA (Site Code: 004075) is located slightly further away at approximately 3.6 kilometres from the site. Having inspected the site, I noted that there appears to be no streams within or adjacent to the subject site which could provide a hydrological connection between the proposed development and the Natura 2000 sites in question. This together with the fact that it is proposed to reconnect the proposed development with municipal services in terms of foul sewage and water supply would not result in any potential pathway between the subject site and the Natura 2000 sites in question. Thus, having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development will be likely to have a significant effect individually or in combination with other plans or projects on a European site.

13.0 Conclusions and Recommendations

Arising from my assessment above I consider the proposed development to be in accordance with the proper planning and sustainable development of the area and would not have any significant adverse impact on the amenity of existing residents and I therefore recommend that the Board uphold the decision of Donegal County Council and grant planning permission for the proposed development based on the reasons and considerations set out below

14.0 Reasons and Considerations

It is considered that the proposed development, subject to conditions set out below would not adversely affect the residential or visual amenities of the area, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

15.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by the planning authority on the 19th day of December, 2019 and the 27th day of January, 2020. 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 the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Details of all materials, colours and textures of all external finishes to the proposed dwellings and apartment blocks shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements including the attenuation and disposal of surface water, shall comply with the planning authority for such works and services.

Reason: In the interest of public health.

4. The applicant or developer shall enter into a water and/or wastewater connection agreement with Irish Water prior to the commencement of development.

Reason: In the interest of orderly development.

5. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

6. Footpaths shall be dished at road junctions in accordance with the requirements of the planning authority. Details of the locations and materials to be used in such dishing shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of pedestrian safety.

7. The location and layout of on-street and off-street car parking spaces shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: To ensure adequate off-street parking provision is available to service the proposed development.

8. Public lighting shall be provided in accordance with a scheme details of which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interest of amenity and public safety.

9. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

10. All screen boundaries surrounding the development shall be at least 1.8 meters in height above ground level, constructed in concrete block and rendered to match the external finishes of the houses and apartment blocks and shall be capped.

Reason: In the interest of residential and visual amenity.

11. All rear gardens shall be bounded by block walls, 1.8 metres in height, capped and rendered on both sides to the written satisfaction of the planning authority.

Reason: In the interest of residential and visual amenity.

12. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all

estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility [and to ensure the use of locally appropriate placenames for new residential areas].

13. Areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded and landscaped in accordance with the detailed requirement of the planning authority. Details of the proposed equipment to be incorporated into the children's play area shall be agreed in writing with the planning authority prior to commencement of development. Details of suitable ground coverings and materials within the playground area shall be agreed in writing with the planning authority prior to commencement of development.

Reason: In order to ensure the satisfactory development of open space areas and their continued use for this purpose.

14. Site development and building works shall be carried out between the hours of 0800 hours to 1900 hours Mondays to Fridays inclusive and between 0800 hours to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

15. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

16. The dwellings subject of this permission shall be used as permanent houses and apartments only and shall not be used for the purposes of holiday homes. Any use of any of the units for a holiday home shall be authorised by a separate grant of planning permission.

Reason: In order to define the terms of the permission and in the interest of surrounding residential amenity.

17. Details of all access arrangements including radii and sightlines at the junction between the internal access road and the public road serving the development shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of traffic safety.

18. 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. This

scheme shall include the following:

- (a) A plan to scale of not less than 1:500] showing –
 - (i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder and shall not include prunus species.
 - (ii) Details of screen planting
 - (iii) Details of roadside/street planting
 - (iv) Hard landscaping works, specifying surfacing materials, furniture and play equipment and finished levels.
- (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment.
- (c) A timescale for implementation including details of any phasing.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

- 19. Prior to the first occupation of the dwelling/apartments hereby permitted the applicant shall resurface the entire width of the adjoining public carriageway (L-1253-1) along the entire site frontage. Details of the resurfacing shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of traffic safety and the amenity of the area.

20. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

21. The developer shall pay to the planning authority a financial contribution of €28,962 (twenty eight thousand nine hundred and sixty-two euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

22. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

Paul Caprani,
Senior Planning Inspector.

7th September, 2020.