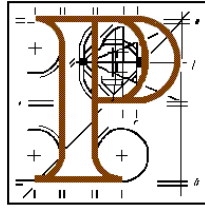


An Bord Pleanála



Inspector's Report

PL17.246398

DEVELOPMENT:-

Construction of a house domestic garage and new site entrance.

ADDRESS:-

Whitebeam Avenue, Athlone Co Westmeath

PLANNING APPLICATION

Planning Authority:

Westmeath County Council

Planning Authority Reg. No:

15/7093

Applicant:

Maria Bracken

Application Type:

Permission

Planning Authority Decision:

Grant

APPEAL

Appellant:

Tom Parker

Types of Appeal:

3rd Party -v- Grant

Observers:

None

Date of Site Inspection:

June 3rd 2016.

INSPECTOR:

Paul Caprani

1.0 INTRODUCTION

PL 25A 246398 relates to a third party appeal against the decision of Westmeath Co. Council to grant planning permission for a dwelling with a domestic garage and all associated works at Whitebeam Avenue, Co. Westmeath. The grounds of appeal argue that the proposed dwelling house is located on lands that were designated as public open space under a previous grant of planning permission made by the Council in 1987. As such the proposed development materially contravenes a condition associated with the parent permission.

2.0 SITE LOCATION AND DESCRIPTION

The subject site is located in the northern environs of Athlone Town, near the Ballymahon Interchange at Junction 10 on the N6. The site is accessed off the Ballymahon Road via the Two-Mile Round Road which leads to the Whitebeam Ave on which the appeal site is located. The Whitebeam Ave is a suburban residential cul-de-sac running in a north-south direction and it provides access to approximately 20 detached dwellings.

The subject site is located at the northern end of Whitebeam Ave on the western side of the road. The site is roughly rectangular in shape and has a site frontage of c.20 m and a depth of 38 m. A high (in excess of two metres) conifer hedge runs along the entire road frontage screening the interior of the site from the public roadway. The stated area of the site is 861 sq.m. It backs onto the side gable of a dwelling fronting onto Chestnut Court, a small residential enclave to the west. The northern boundary of the site lies adjacent to the rear gardens of The Glen, a more substantial suburban residential development to the north of the subject site. A vacant plot of land is located directly opposite the site on the eastern side of Whitebeam Ave. No. 15 Whitebeam Ave is located to the south of the site. It comprises of a detached single storey bungalow.

The site itself is currently fenced off and overgrown. The ground levels incorporate a fall of approximately 1.5m from east to west. Overhead wires traverse the rear of the site.

3.0 PROPOSED DEVELOPMENT

Planning permission is sought for a split level dwelling, to be centrally located on the subject site. The lower level of the dwelling is located to the rear (west of the site) and accommodates the kitchen, dining and living areas. The upper part of the house, nearest Whitebeam Ave accommodates 4 bedrooms and

associated bathrooms and a study. The differential in ground levels between the front and rear is 1 metre. The entrance to the house is located along the southern elevation. The house has a GFA of 200 sq.m and rises to a ridge height of just below 6m. The external elevations comprise extensively of a plaster render finish and rubble limestone outer leaf. The parking area and the main area of private open space is located to the rear of the dwelling. The vehicular entrance accesses the rear along the southern boundary. The separation distances between the proposed dwelling and the adjacent dwelling to the immediate south varies between 5.7m and 8.8m. The dwelling will avail of public services in terms of foul sewage and water supply.

It is also proposed to construct a separate garage in the south western corner of the site. The garage has a GFA of 38 sq.m. and it rises to a ridge height of just above 5.7 m.

4.0 PLANNING AUTHORITY'S DECISION

The application was lodged on the September 9th 2015. Details of the the contract regarding the sale of land are contained on file.

A letter from the current appellant has been submitted, the content of which has been read and noted.

4.1 Additional Information Request

The initial planner's report dated October 30th 2015 recommended additional information be requested in relation to the following:

- Changes in the design, in particular changes to the façade and the wide gable spans which better reflects the existing housing pattern in the area.
- Revisions to the vehicular access and the circulation around the house.
- Comments in respect of the 3rd Party submission concerning the contravention of a conditions of a parent permission requiring open space on the subject site.

4.2 Additional Information Submission

Further information was submitted on the 22nd of January 2016. In relation to the first issue raised it is stated that elevations have been changed so as to better reflect the existing housing character of the area. The changes are attached to the response. Changes have been made to the access and the garage has been relocated to the south of the site in order to address the planning authority's concerns with regard to access and circulation. In respect of the issues raised by the 3rd party observation, the planning authority's attention is drawn to the fact that in January 2009 the County Registrar confirmed the vendor of the site is the owner of and entitled to occupation of

the site to which the planning application applies. Revised site notices were also submitted.

4.3 Further Assessment by Planning Authority

A further submission was made by the 3rd party observer, reiterating concerns that the dwelling house is located on lands which were designated as lands for public open space under a previous grant of planning permission (reg. ref. 34/87).

The final planners report notes the concerns raised in the 3rd party observation. It is stated however that the site is zoned for residential development and the site would not meet with the open space standards set out in the current plan as it is neither functional nor useable. It is further stated that there is a need to develop zoned and serviced land in the most efficient way possible. The report recommended that planning permission be granted for the proposed dwelling.

Westmeath granted planning permission for the house on March 9th subject to 7 conditions.

5.0 PLANNING HISTORY

There are no history files attached however details of the planning history are attached to the 3 party observer's submission on file.

A Survey Report prepared for Westmeath Co. Council for the Whitebeam Estate is attached to the observer's submission dated 26th of February 2016. The survey noted that planning permission was originally granted for a housing development (the number of houses are unspecified in the report) in December 1972 under Reg. Ref. 752/72. At the time of writing the report 14 bungalows and 6 two-storey houses were constructed on site.

A further application was made on site in 1987 for retention of 7 dwellings at Whitebeam Ave under Reg. Ref. 34/87. The Planning Authority granted permission subject to 2 conditions. Condition no. 2 stated that "The open space to the north of sites 15 and 15A shall be landscaped and planted to the satisfaction of the Planning Authority. Reason in the interests of residential amenity.

6.0 GROUNDS OF APPEAL

A 3rd party appeal was received on behalf of the Chairperson of the Whitebeam Residents Association by Sean Lucy & Associates Ltd. The grounds of appeal are outlined below:

- The development of a house on the subject site would materially contravene condition no. 2 of the Reg. Ref. 34/87 which designates the site as open space for the benefit of the residents of the estate.
- The lands in question, having been designated as public open space should have been taken in charge by the local authority. The question of whether or not the owner of the lands is question have sufficient legal interest to make the application is also raised.
- The appellant bought his house on the understanding that the lands in question would be developed as public open space. Comments in the local authority planners report are completely dismissive of the open space requirements associated with the estate. The site is one of the few remaining areas of public open space directly associated with the estate. The integrity of the planning process could be called into question if the site is permitted to be developed. The lands should have been transferred over to the Council when the estate was taken in charge.
- The development of the site would seriously injure the amenities of the area and depreciate the value of property in the vicinity.
- Contrary to what is sated in the planners report, it is contended that the site is not in fact zoned residential. The zoning in the development plan is a blanket zoning, encompassing residential areas and areas of open space alike.
- The 1991 Survey Report recommended that the open space be 're-graded, rotovated, tilled and seeded and maintained by the developer for a period of one year. This was never done.
- It is recommended that planning permission be refused for 4 reasons relating to material contravention of an condition attached to an extant permission, the proposal would impact on residential amenity, the proposal would set and undesirable precedent and the grant of permission would undermine the integrity of the planning system.

7.0 APPEAL RESPONSES

Neither the planning authority nor the applicant have response submissions to the grounds of appeal on file.

8.0 DEVELOPMENT PLAN PROVISION

The site is governed by the policies and provisions contained in the Athlone Local Area Plan 2014-2020. The site is zoned for residential development under the Plan.

The main residential policies of the Council as they relate to the subject site are:

P-SR-1 – To support the principle of sequential development in assessing all new residential proposals, whereby areas closer to the centre of the town, including underutilised and brownfield sites, will be chosen for development in the first instance to promote a sustainable pattern of development.

P-SR-2 – To encourage and promote the development of underutilised infill and backland development in the town subject to development management criteria being met.

P-RLD1 – To achieve attractive and sustainable development and create high standards of design, layout and landscaping for new housing development.

P-RLD3 – To require that appropriate provision is made for amenity and public open space as an integral part of new development or extensions to existing development.

9.0 PLANNING ASSESSMENT

9.1 Introduction

I have read the entire contents of the file and have had regard to the issues raised in the grounds of appeal, visited the site and reviewed the planning history associated with the site and its surroundings. I consider the overall layout of the dwelling, incorporating the changes as requested by the planning authority by way of additional information, generally to be acceptable. Furthermore I do not consider that the proposed dwelling house will give to overlooking or overshadowing of the adjoining dwelling to the south and thus the residential amenity of the adjoining dwelling will not be adversely affected to any material extent. Therefore I consider that the Board in this instance can restrict its deliberations to the main issue raised in the grounds of appeal that

is, whether or not the development the site is acceptable in principle having regard to its planning history.

9.2 Planning History

Planning permission was granted on the lands surrounding the subject site for a housing development in 1972. The site was partially developed. It appears that not all houses were constructed in accordance with the permission and a further application was made in 1987 for permission to retain buildings as constructed under Reg. Ref. 87/34. In this grant of permission a condition was attached stating that 'The open space to the north of sites 15 and 15A shall be landscaped and planted to the satisfaction of the Planning Authority'. A survey report dated November 1991 notes that the open space in question was 'unkempt, no landscaping and these haves have in fact been fenced off'. It goes on the note that the area should be graded, rotovated, tilled and seeded. This area should be landscaped and maintained by the developer for a minimum of 1 year'.

It also appears that the applicant in the case of Reg. Ref. 87/34 (Mr. John Casey) sold the lands in question to the current applicant under a Memorandum of Agreement on June 24th 2015. Subsection 9 of this agreement states that '*The within purchase is subject to the Purchaser obtaining full planning permission for the erection of one dwelling house within 6 months of the date hereof or such longer period as the parties agree herein. If said Planning permission does not issue within the said 6 months with acceptable conditions to the said purchasers then the contract shall be rescinded and the deposit refunded without interest, costs or compensation*' (see details of the agreement submitted with planning application).

9.3 Principle of Development on Site.

9.3.1 Existing Public Open Space Provision

It appears to be clear and unambiguous that the subject site has been earmarked as public open space as per the conditions attached to the grant of planning permission under Reg. Ref. 87/34. There appears to be no subsequent planning history which has materially altered or revoked this condition. While the condition may be unenforceable, due to the intervening time period which has elapsed, it remains a fact that the site in question was intended to provide public open space to serve the development in question and this open space was considered to be an integral part and indeed a requirement on which the basis to grant planning permission was predicated. The Board will note that there is only a small area of public open space provided at south end of Whitebeam Ave and this green area is modest in

size, approximately 0.17 ha. The lack of open space, be it usable or incidental, to serve the overall estate makes the provision of open space on the site in question all the more necessary.

9.3.2 Residential Zoning Objective

The planners report also argues that the site has now been zoned residential and therefore the principle of residential development is acceptable on the subject site. The site is governed by the zoning objective R2 'Existing Residential' and as the appellant argues, small areas of incidental open space are covered by this residential zoning objective. I have inspected the site and its surroundings and there appear to be no large tracts of undeveloped land in public ownership that are zoned for residential development. There are a number of small linear incidental landscaped open spaces throughout the residential layouts that do not appear to attract any zoning designation. These spaces however would not be of a sufficient size and dimension to accommodate a residential plot.

It is however worth noting that lands directly opposite the site are zoned for 'new residential development' (R1). If it were the planning authority's objective to develop the subject site for residential development I would suggest that the R1 zoning objective would be better suited zoning designation than the R2 'existing residential'.

9.3.3 Functionality of the Open Space

The planners report also suggests that the site is not suitable in terms of size and dimensions to provide usable open space. While the site may be of an insufficient size to create a formal 'kick-about' area, it is of sufficient size to create a play area for young children and perhaps more importantly, a well landscaped pocket sized open space would serve the visual and environmental amenity of the estate. It is not as if the lands in question comprise of a narrow strip of leftover lands which provides little amenity benefit. The site in question is well proportioned and easily accessible for nearby residents which are key considerations in open space provision. Section 4.18 of the DOEHLG Guidelines for Planning Authorities on Sustainable Residential Development in Urban Area stresses the importance of accessibility and variety in open space provision.

9.3.4 Efficient Use of Zoned Lands

Finally the planners report argues that the dwelling house complies with policies to efficiently utilise zoned and serviced land in terms of providing new housing. This is a reasonable point however this needs to be balanced against the need to provide adequate open space in residential developments particularly where the planning authority has originally sought that the lands in question would be used for open space purposes. Furthermore the residents of the existing development can be forgiven for having a reasonable expectation that the subject site would be developed for open space purposes having regard to the planning authority condition no 2 in respect of Reg. Ref. 87/34. Houses within the estate, particularly houses in close proximity to the subject site may have been purchased on the understanding that the lands in question would be kept free from development and developed as public open space.

9.3.5 Undesirable Precedent

Finally in respect of the principle of development, I would agree with the grounds of appeal that a grant of planning permission in this instance would set an undesirable precedent in terms of non-compliance with planning conditions. Particularly in terms of finishing estates, providing appropriate infrastructure including landscaping and open space. A grant of planning permission in this instance would tacitly imply that it is not imperative that all planning conditions need to be complied with in the original grant of planning permission. In fact in the case of the current application and appeal before the Board, one could go further and suggest that non-compliance with condition could be of a financial benefit to the developer if the development were permitted to sell on land earmarked for open space for future development and financial gain.

I therefore recommend that the decision of the planning authority be overturned and planning permission be refused to the proposed development.

10.0 Appropriate Assessment

The nearest designated Natura 2000 sites are:

The Lough Ree SPA and SAC c.1.7 km to the west and 1.6 km to the north of the subject site.

The Middle Shannon Callows SPA and Shannon Callows SAC c. 1.85 km to the south of the site.

The Crosswood Bog SAC c. 3.5 km to the south east of the subject site.

Having regard to the nature and scale of the proposed development and nature of the receiving environment and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

DECISION

Refuse planning permission based on the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

It is considered that the proposed construction of a dwelling house on the subject site would material contravene condition number 2 of Westmeath County Council's decision under Register Reference 34/87 which required that the subject site be landscaped and planted to the satisfaction of the planning authority. The granting of planning permission for the proposed dwelling house would set an undesirable precedent in terms of non-compliance with planning conditions and would therefore be contrary to the proper planning and sustainable development of the area.

Paul Caprani
Senior Planning Inspector

June 13th 2016