



An
Bord
Pleanála

Inspector's Report PL 16 247581.

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| Development | Construction of a house and ancillary site development works. |
| Location | Rathscanlan Swinford, Co. Mayo. |
| Planning Authority | Mayo County Council. |
| P. A. Reg. Ref. | P. A. Reg. Ref. 15/708 |
| Applicant | Stephen Hannon |
| Type of Application | Permission |
| Decision | Refuse Permission. |
| Type of Appeal | First Party |
| Appellant | Stephen Hannon |
| Date of Site Inspection | 24 th January, 2017. |
| Inspector | Jane Dennehy |

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1.0 Site Location and Description

- 1.1. The site of the proposed development has a stated area of 1.32 hectares and is formed from lands at the rear, north east side of an existing detached house on a corner site plot adjacent to the entrance to within Meadow Park, an elevated residential development overlooking Swinford town to the south. The north-western boundary adjoins the footpath and a setback pull in area at the side of a local road, (L 5381) leading to the north east. The, the south-eastern boundary adjoins the site of a dwelling to the south and the eastern boundary is adjacent to agricultural lands. The ground level is steeply sloped roughly from north, north east to south, south west. A small area at the north-east corner is shown as being within the applicant's ownership but outside of the application site.

2.0 Proposed Development

- 2.1. The lodged plans indicate proposals for construction of a detached house in three linked blocks at the centre of the site. Opening of a new vehicular access direct onto the public road is indicated along with on-site car parking for two cars and soft landscaping. The dwelling will be at a level below that of the adjoining road with the slope being cut to facilitate the development and inclusion of a lower ground floor level. The applicant proposes connection to the public sewer and water main via the site of the adjoining dwelling within Meadow Park.
- 2.2. In the additional information on 3rd October, 2015 in response to a request from the planning authority the dwelling design is modified to that of a single storey dwelling involving less intervention to the existing ground levels and incorporating a screen wall to the side.
- 2.3. It is also stated that the private sewer in the lands was designed with capacity to serve two dwellings, (the existing dwelling to the west and the proposed dwelling) in response to the statement in the additional information request that Mayo County Council is not in agreement with arrangements that do not provide for direct connection to the public sewer and necessitate routing through private lands.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 21st October, 2016 the planning authority decided to refuse permission for the proposed development on the basis of the following reason.

Comment [JD1]:

“Having regard to the fact that the site is not serviced directly by a public sewer the applicant’s proposal to connect tin to the public sewer through lanes and private foul pipework outside of the ownership of the applicant if granted, would establish an undesirable precedent for similar development in the area. Notwithstanding the current residential zoning on site it is considered that the proposed development would be premature due to an existing deficiency in the provision of sewerage facilities in the area and would be contrary to the proper planning and sustainable development of the area. “

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer in her report on the original proposal notes the concerns of the Area Engineer about the proposed arrangements for connection to the water mains and public sewer via third party privately owned lands. She states that following review of the additional information submission the applicant in response to a verbal enquiry from the planning authority stated that arrangements for a private treatment plant would not be feasible owing to the steeply sloped nature of the site. The planning officer indicated satisfaction with the revised design for the proposed dwelling provided in the additional information submission.

According to the planning officer report Meadow Park has not been taken in charge by the local authority to date.

3.2.2. Other Technical Reports

The report of the roads department indicates no objection subject to compliance with conditions of a standard nature.

4.0 Planning History

Under P. A. Reg. Ref. 06/411, an application for permission for two houses was lodged with the planning authority by the current applicant. Further to a request for additional information one house was omitted and a house similar in form and design to that in the original application for the current case under appeal was proposed. Permission was granted on 24th January, 2007 subject to conditions. Condition Nos. 7 and 8, and 9 which are identical contain the requirement for sewer and water main connections to be implemented after consultation with the planning authority and prior to commencement of the development.

According to the planning officer report, permission was granted for two houses under P. A. Reg. Ref. 99/1861 and the grant of permission was not taken up. A further application under P. A. Reg. Ref. 03/11 was not determined following issue of a request for additional information to which a response was not received.

According to the submissions of the applicant's agent the prior applications for the residential development at, Rathscanlon were lodged with the planning authority under P. A. Reg. Ref. 85/540 and P. A. Ref. Ref 91/355.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Mayo County Development Plan; 2014-2020 The site is within an area subject to the zoning objective "Low residential". (up to five units per hectare.)

6.0 The Appeal

6.1. The Appeal.

6.1.1. An appeal was lodged on behalf of the applicant by John Halligan Architects 17th November, 2016. According to the appeal:

- Initially permission was granted for two houses on the appeal site as part of the overall residential scheme. Subsequently the number of units was reduced to one. The applicant as advised that the sewer manholes to serve the sites were installed at the time of construction of the scheme to enable connections to be made and wishes to update the previously approved development and have “an active permission” for the site so that development can take place in the future.
- The site should be considered as an infill serviced site as the sewer and manhole have been constructed to service the site as provided for under the original grant of planning permission.
- Development of the site would enhance the entrance area to the Meadow Park without adverse impact on the sewer.

6.1.2. It is requested that permission be granted for the proposed development.

6.2. Planning Authority Response

6.2.1. There is no submission from the planning authority on file.

7.0 Assessment

7.1. The sole issue central to the determination of the decision is that of the proposed arrangements for connection to the public sewer via third party lands.

The application site had the benefit of a grant of permission for development of one house in which the permitted arrangements for connection to the sewer and water mains are similar to the arrangements indicated for the current proposal. The prior

grant of permission would have expired in January 2012 and since then there has been no extant grant of permission for development on the appeal site.

It is considered that a reasonable case has been made in the appeal on grounds of the grounds that the original scheme provided for the arrangements as proposed and, that the planning authority was satisfied with the similar arrangements proposed in the successful application under P. A. Reg. 06/411. As the grant of permission was not taken up and lapsed five years ago, *de novo* consideration leading to an alternative outcome would be fully justified. Nevertheless, it appears that the planning context and circumstances have not materially changed in the intervening period. Furthermore, the applicant's statement to the planning authority, at application stage that use of a private treatment plant would not be feasible on the site due to steep slope according to the planning officer report is reasonable.

The subject lands are zoned for residential development and the revised house design proposed in the additional information submission is considered acceptable both in terms of visual impact in views from the road frontage and public realm. In terms of compatibility with adjoining development it is considered that it has been demonstrated that the proposed dwelling would not give rise to overlooking or other negative impact on residential amenities of existing properties.

While arrangements for connection to a public sewer indirectly due to reliance on routing through third party lands is undesirable and should not normally be permitted, it is considered, in view of the planning history and lack of alternative options for servicing the proposed development a refusal of permission would be particularly onerous. It would also appear that there is little scope for precedent to be set on similar grounds for further similar development and it is not apparent in the information that is available from the planning authority that there are any additional circumstances specific to the current proposal that would support the rejection of the current proposal for connection via third party lands that would lead to significant concern as to risk of adverse impact on public health or pollution due to substandard arrangements.

7.2. **Appropriate Assessment.**

7.3. Having regard to the location of the proposed development which is for a single dwelling unit adjacent to existing residential development on zoned lands in an area which is serviced, it is considered that no appropriate assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

9.0 In view of the foregoing, it is recommended that the planning authority decision to refuse permission be overturned and that permission be granted. Draft reasons and considerations and conditions are set out below.

10.0 **Reasons and Considerations**

Having regard to planning history and the zoning objective for the site and the existing adjoining residential development at Meadow Park it is considered that the proposed development would not be prejudicial to public health or set undesirable precedent for similar development, would not be seriously injurious to the visual and residential amenities of the area and would be in accordance with the proper planning and development of the area.

11.0 **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 lodged with the planning authority on 3rd October, 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the

planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Arrangements for connections to the public sewer and water main shall be in accordance with the requirements of the planning authority. Prior to the commencement of the development, the applicant shall submit and agree in writing with the planning authority full details of connections on a drainage and water main layout drawing.

Reason: In the interest of clarity and public health.

3. A wall, constructed in local stone to a maximum height of 1.2 metres shall be constructed along the boundary with the public road. Details of the proposed boundary treatment and materials and finishes and for hard and soft landscaping for all external space within the perimeter of the site shall be submitted to and agreed with the planning authority prior to the commencement of the development.

Reason: In the interest of the amenities of the area and clarity.

4. The site shall be landscaped in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include indigenous deciduous tree and hedge planting. Any plants which die, are removed or become seriously damaged or diseased, within five years from the completion

of the development, 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 orderly development and visual amenity.

5. Details of the materials, colours and textures of all the external finishes including roof materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. Hours of construction shall be confined to the hours of 0800 and 1900 Mondays to Fridays excluding bank holidays and 0800 hrs and 1400 hrs on Saturdays only. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of the amenities of the area and clarity.

6. The developer shall pay to the planning authority a financial contribution of 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. The contribution shall be in respect of the retail unit only and shall be paid prior to the 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 the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Jane Dennehy
Senior Planning Inspector
17th February, 2017.