



An
Bord
Pleanála

Inspector's Report PL17.248363

Development	House, garage, new road entrance and all associated site works
Location	Park View, Ratoath, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	RA/161201
Applicant	Adrian Rath and Ursula Ryan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Park View Residents
Observer(s)	None
Date of Site Inspection	18 th July 2017
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.161 ha, currently forms part of the rear garden of an existing single storey house located on the western side of the Skryne Road in Ratoath, Co. Meath. The appeal site is irregularly shaped, and is bounded by a small stream/drainage ditch to the west and south, a small residential cul-de-sac known as Norman Grove to the east, and the existing single storey dwelling to the north. A larger residential development known as Park View is located to the west of the appeal site, which terminates in a cul-de-sac turning head and public open space adjacent to the small stream/ditch which bounds the appeal site.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a two storey four bedroom detached house with a detached garage to the north east, a new road entrance from the Park View development to the west and all associated site works.
- 2.2. The proposed house has a cruciform shape with projecting two storey elements to the north and south and a single storey element to the west. The front elevation of the house is oriented to the north and it has a floor area of 250.8 sq m.
- 2.3. The finishes of the proposed house are primarily render, with a stone-clad curved element to the front elevation, and the single storey element to the west is also stone-clad. The house features a pitched roof, which is hipped on the projecting north and south elements, and is of slate construction. The finishes of the proposed garage are similar.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Meath County Council decided to grant planning permission subject to 18 conditions, including the following summarised conditions:
 - C2: Prior to commencement, the developer shall submit written confirmation to demonstrate sufficient legal interest/consent to provide a new vehicular entrance from the subject property to Park View estate road.

- C10: Landscaping scheme to be submitted.
- C15: Archaeological monitoring.

3.2. **Planning Authority Reports**

3.2.1. The Planning Officer's reports can be summarised as follows:

- Proposed development is acceptable in principle.
- Road Design Office has no objection to the proposed access via the turning head.
- Proposed house will not overlook any adjacent properties and maintains required separation distances.
- Subject site is not within a flood zone.
- Proposed development would not give rise by itself or in combination with other developments to impacts on any Natura 2000 site.
- Site is within an area of archaeological potential and a condition requiring monitoring could be attached.
- Given the setting and proximity to Park View housing, a landscaping condition could be attached.

3.3. **Other Technical Reports**

3.3.1. **Housing:** No Part V requirement for single house.

3.4. **Prescribed Bodies**

3.4.1. None.

3.5. **Third Party Observations**

3.5.1. A number of third party observations were made. The issues raised can be summarised as follows:

- The road at Park View was taken in charge by Meath County Council, but not the ditch/stream or open space which physically separates the site from the road. Taking-in-charge drawing enclosed with observation.
- Application site is 8m from the public road and would require works on lands belonging to Mr Preston to form a driveway and access
- No evidence of consent from the landowner has been provided with the application. Planning Authority is not in a position to grant permission for a development without access to the public road or for works outside of the application site on private lands.
- Location of proposed access is currently used as play area by children. It adjoins an open space area and this end of the cul-de-sac forms an integral part of the open space.
- Allowing access via the cul-de-sac is contrary to A1 and F1 zoning objectives as it will seriously affect the amenities of the residents.
- Proposed development is more akin to a bed and breakfast or guesthouse due to size and number of bathrooms/car parking spaces. Applicants parents operate a contiguous B&B and observers have concerns regarding the potential for large volumes of traffic to access Park View.
- Hammerhead at the end of Park View is used for parking and turning vehicles in addition to use as a play area. Proposed development would be a traffic hazard. This is the only overflow parking area within the estate.
- Access to the site should be from Norman Grove.
- Overlooking of neighbouring properties.
- Proposal does not reflect building lines or design of existing houses. No details of proposed gate were provided.
- Application documentation indicates that a total of 12 car parking spaces could be accommodated, which is at odds with the Development Plan.
- Trees will have to be removed if the development is permitted, which will adversely affect the setting of the adjoining open space. Prior to lodging the application some trees were removed from the boundary.

- Policy NH POL 15 seeks to protect and retain townland boundaries including hedgerows.
- Impact on the stream which it is proposed to culvert. Policy WS POL 25 seeks to protect, maintain and improve the natural character of the watercourses and rivers in the County.
- There are ongoing issues with sewage capacity and overflows within Park View, which the applicants are proposing to connect to.
- Application cover letter states that up to 14 car parking spaces will be provided.
- Contrary to Policy RES POL 1 of Ratoath LAP.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. **Reg. Ref. 98/2128:** Permission granted in 1999 to Noel and Anne Ryan for construction of new dwelling, domestic garage and domestic glasshouse. The vehicular entrance to the proposed dwelling was via the Norman Grove cul-de-sac to the east. Condition 2 required evidence of the wayleave to be submitted to the Planning Authority prior to commencement. This permission was not implemented.

4.2. Surrounding Area

- 4.2.1. I am not aware of any relevant recent planning history in the surrounding area.

5.0 Policy Context

5.1. Meath County Development Plan 2013-2019

- 5.1.1. This Plan provides the strategic planning policies and objectives for the County. The appeal site is zoned 'A1', existing residential, the Objective of which is to protect and enhance the amenity of developed residential communities. The Development Plan notes that in A1 zones, the Planning Authority will be primarily concerned with the protection of the amenities of established residents. While infill or redevelopment

proposals would be acceptable in principle, careful consideration would have to be given to protecting amenities such as privacy, daylight/sunlight and aspect in new proposals. It also states that in all residentially zoned lands, no residential development shall be permitted on lands that are subject of a deed of dedication or identified in a planning application as open space to ensure the availability of community and recreational facilities for the residents of the area.

5.1.2. Ratoath is designated as a Small Town in the settlement hierarchy for the County, and the following Objectives are noted.

- SS OBJ 12: To ensure that Small Towns develop to cater for locally generated development and that growth occurs in tandem with local services, infrastructure and demand.
- SS OBJ 13: To ensure that Small Towns grow in a manner that is balanced, self sustaining and supports a compact urban form and the integration of land use and transport.

5.1.3. Chapter 11 sets out the general development management standards and guidelines relevant for urban residential development.

5.1.4. The site is also partially located within the Area of Archaeological Interest.

5.2. Ratoath Local Area Plan 2009-2015

5.2.1. The Ratoath LAP is referred to by the appellants. The zoning map in the LAP is consistent with the County Development Plan zoning map. Policies include RES POL: 1: To provide for the integration of new housing into the natural and built environment in a manner that makes a positive contribution to the overall environment in the locality.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal was made on behalf of Park View Residents. The appeal names these residents as Bernie and Peter Gallagher and Nathalie Lawlor. The grounds of appeal can be summarised as follows:

- The applicants are proposing works on lands outside of the application site and which is not in their control or part of the public road.
- The construction of a driveway and bridge would be required over the stream which is outside of the application site. The Planning Authority has granted permission for a landlocked development with no access.
- Decision is ultra vires. Applicants must demonstrate sufficient legal interest in the site to carry out the development but have failed to do so.

6.1.2. The appellants also submitted a copy of their earlier observation to the Planning Authority with their appeal.

6.2. **Observations**

6.2.1. None.

6.3. **Applicants' Response to Appeal**

6.3.1. The applicants' response to the appeal can be summarised as follows:

- Area is zoned for residential development and there are no issues of overlooking or overshadowing.
- The proposed development is a single family home only and the applicants have no objection to any condition placing that limitation on the proposed entrance.
- It is noted that most of the original objectors have not joined in the appeal in acceptance of the applicants assurances and longstanding connection with Ratoath.
- Park View estate has been taken in charge, but legal title for residual areas resides with the original developer, Mr Frederick Preston. Mr Preston has indicated verbally to the applicants that he is willing to consent to the new entrance however he wishes to take legal advice on the drafting of a document.

- It is understood that the transfer of the lands in question from Mr Preston to Meath County Council may be underway, however this legal transfer has not been concluded at this time.
- Condition 2 would be adequate to ensure that the proposed entrance would not infringe on any other property rights. It would be helpful if the Board would consider omitting the reference to a solicitor/Commissioner of Oaths, as this reference appears to have caused offence to Mr Preston.
- One additional house will not have any tangible impact on traffic volumes or safety of the open space. The appellants regard the end of the cul-de-sac as a parking space for their commercial vehicle, obstructing its intended use as a turning point.

6.4. Planning Authority Response

6.4.1. Response to Appeal

The Planning Authority's response to the appeal can be summarised as follows:

- All matters outlined in the appeal were considered in the course of assessment of the application.
- Compliance with condition 2 will ensure sufficient legal interest to carry out the works will be demonstrated. The proposed dwelling is located on lands which are in the ownership of the applicants.
- Proposed development will not result in the loss of any permitted formal play space or open space and will increase passive surveillance.
- Proposed development will not give rise to a traffic hazard due to minimal and infrequent additional traffic movements.
- Applicants' response to further information regarding car parking spaces is acceptable.
- Development will not give rise to a loss of amenity or overlooking.
- Conditions 9 and 10 are sufficient to address any perceived impact on the public open space or the original field boundary.

- Existing stream is outside of the development boundary. The only works in relation to the stream are a new culvert at the entrance area and will not adversely affect the stream.

6.4.2. **Response to Applicants' Response to Appeal**

- No further comment.

6.5. **Other Responses**

6.5.1. Two submissions were received from the appellants' in response to the applicants' response and they can be summarised as follows:

- The majority of residents in Park View estate are still objecting to the proposed development and a list of signatures is submitted.
- Applicants' response confirms that the land is landlocked and that no consent from the owner of the strip was secured.
- Condition 2 is an ultra vires condition that requires the consent of a third party to carry out development outside the application site.
- Devaluation of property due to changing the position of the appellant's house within the estate.
- No objection to the building of a family house on the site, but strong objection to the access proposal. Previous planning permission provided access through the Norman Grove development.

7.0 **Assessment**

7.1. I consider that the key issues in determining the appeals are as follows:

- Principle of Development.
- Legal interest in site.
- Access and Traffic.
- Residential amenity.
- Archaeological heritage.

- Appropriate Assessment.

7.2. Principle of Development

- 7.2.1. The proposed development consists of a single house and garage close to Ratoath town centre on lands which are zoned 'A1', existing residential. The Development Plan notes that the primary concern under this zoning is the protection of the amenities of established residents and that while infill or redevelopment proposals would be acceptable in principle, careful consideration must be given to protecting amenities such as privacy, daylight/sunlight and aspect in new proposals.
- 7.2.2. Having regard to the location and zoning of the appeal site, I am satisfied that the proposed development is acceptable in principle, subject to consideration of its impact on existing residential amenities and the other planning issues identified in section 7.1 above.

7.3. Legal Interest in Site

- 7.3.1. The proposed vehicular access point to the new house is from the Park View cul-de-sac roadway. The boundary of the appeal site is c. 8m from the edge of this roadway, and the intervening area comprises a grass verge, and the stream/ditch. On foot of a request for further information, the applicants have moved the pillars for the entrance inside the red line boundary, however it is still proposed to culvert a section of the stream/ditch outside of the site boundary in order to facilitate the access. On the date of my site inspection, I noted that the stream/ditch was entirely dry.
- 7.3.2. The appellants contend that the applicants do not have sufficient legal interest to construct this access, and that condition 2 attached to the Planning Authority's decision is ultra vires, since it requires third party consent for works outside of the application site.
- 7.3.3. The applicants contend that the residual strip of land between the roadway and the site boundary is in the ownership of the original developer of Park View, that the owner has verbally indicated his willingness to facilitate access subject to a legal agreement, but that it was not possible to provide correspondence from the owner confirming the applicants' position within the time available to respond to the appeal.

Folio documents and a taking-in-charge drawing submitted by the appellants would appear to support the current ownership situation outlined by the applicants.

- 7.3.4. Section 5.13 of the Development Management Guidelines for Planning Authorities 2007 advises that where doubts arise as to the sufficiency of the applicant's legal interest in lands the subject of an application that the planning authority should seek further information in order to establish the applicant's legal interest. Only when it is clear from the response that the applicant does not have legal interest should permission be refused on the basis of legal interest. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act. In other words, the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.
- 7.3.5. Having regard to the fact that the house, garage, hard landscaping, fences, pillars etc. are all situated on lands within the ownership of the applicants, I consider that the applicants have sufficient legal interest in the site for the purposes of making a planning application and I do not recommend refusal on this point. With regard to the final connection over the residual area to the Park View roadway I note that, as per section 34(13) of the Planning and Development Act 2000, as amended, a person shall not be entitled solely by reason of a permission under section 34 to carry out any development.
- 7.3.6. With regard to Condition 2 as attached by the Planning Authority, I note that the Development Management Guidelines for Planning Authorities state that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land and that these are ultimately matters for resolution in the Courts. The obligation therefore falls on the applicants to secure all necessary consents or agreements prior to carrying out the proposed development and, if the Board is minded to grant permission, I do not consider that Condition 2 is necessary.

7.4. **Access and Traffic**

- 7.4.1. In order to access the proposed development, a new vehicular access into the appeal site is proposed off the hammerhead turning area which terminates the Park

View cul-de-sac. The appellants have noted that the now-expired planning permission for a house on the appeal site included vehicular access from the Norman Grove cul-de-sac to the east, rather than from the Park View cul-de-sac. The appellants contend that, in addition to the land ownership issues addressed above, that the additional entrance will result in a traffic hazard due to its impact on the hammerhead turning area, additional traffic generation and the current use of the turning area as an informal play area adjacent to the public open space.

- 7.4.2. The proposed development consists of a single house, and I do not consider that it will give rise to a significant volume of additional traffic within the Park View estate. The appellants have expressed concern that the house will be used as a B&B, with reference to the applicant's parents' nearby B&B business, the number of en-suite bedrooms, and the reference in the planning application cover letter to the site being capable of accommodating up to 12 cars.
- 7.4.3. The Park View cul-de-sac provides reasonably good visibility, and due to its alignment and relatively narrow width, it is not a road that encourages high speeds. I consider this to be compatible with its residential context. While the absence of a through-route for vehicles and the subsequent low volume of traffic allows the turning area to be utilised as an informal play area, its primary function is to allow cars to turn, not to provide a play area or to facilitate overflow car parking. The adjoining public open space is a more suitable area for play, and each house has off-street parking for one to two cars. I do not consider that the proposed development would negatively impact on the primary function of the turning area, as off-street parking will be provided within the appeal site. The presence of an additional access point at this location is also likely to discourage parking within the turning area.
- 7.4.4. Notwithstanding the above, I consider that, were the house to be utilised as a B&B, the additional traffic could give rise to conflicts within the Park View estate. I therefore recommend that if the Board is minded to grant permission that a condition be included to clarify that no room in the proposed house shall be used for the purpose of providing overnight paying guest accommodation without a prior grant of planning permission.
- 7.4.5. No details of the proposed gates at the entrance have been provided. Having regard to the open character of the Park View estate, where very few houses have gates,

and in the interests of road and pedestrian safety, I recommend that the height of the gates should not exceed 1.1 metres.

7.5. Residential Amenity

- 7.5.1. The proposed house is oriented with its front elevation facing north and has a separation distance of c. 28m from the existing house on the site. It also has a separation distance of c. 24m from the closest houses within Park View (Nos. 13 and 19). It is separated from the side elevation of No. 5 Norman Grove by c. 3m, but I note that the side elevation of the Norman Grove house only features small opaque windows and the opposing side elevation of the proposed house only has an en suite window at first floor level. Having regard to these separation distances, I am satisfied that the proposed development will not result in any significant overlooking or overshadowing impacts on existing residential properties.
- 7.5.2. While the appellants contend that trees were removed from the location of the proposed entrance prior to the lodgement of the application, I note that the remaining trees and bushes are indicated on the drawings as being retained and trimmed. I consider that this will serve to preserve existing residential and visual amenities and will be effective in mitigating the visual impact arising from the insertion of an additional house in this location. Having regard to the appellant's concerns, I consider it reasonable to include a condition requiring the protection of all trees within and bounding the appeal site in the interests of preserving visual amenity.
- 7.5.3. Subject to the abovementioned mitigation measure, I am satisfied that the proposed development will not seriously injure the residential amenities of properties in the area.

7.6. Archaeological Heritage

- 7.6.1. The appeal site is partially located within the Area of Archaeological Interest associated with Ratoath town centre. No archaeological assessment was submitted with the planning application, and the application does not appear to have been referred to the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs for comment.

7.6.2. The Planning Authority included a condition requiring pre-development archaeological testing to be undertaken, with a subsequent report to be submitted to the Department and Planning Authority. I consider this condition to be reasonable, and if the Board is minded to grant permission, I recommend that a similar condition be included.

7.7. **Appropriate Assessment**

7.7.1. There are no Natura 2000 sites within 15km of the appeal site. Having regard to the nature and scale of the proposed development, which relates to the construction of a single house in a serviced town centre area outside of any Natura 2000 sites, I am satisfied that 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.

8.0 **Recommendation**

8.1. I recommend that planning permission should be granted, subject to conditions as set out below.

9.0 **Reasons and Considerations**

9.1. Having regard to the zoning objectives for the area and the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity, would be acceptable in terms of traffic impact and would be in accordance with the proper planning and sustainable development of the area.

10.0 **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 submitted on the 15th day of February 2017, 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. The proposed gates at the entrance from Park View residential estate shall not exceed 1.1 metres in height.

Reason: In the interests of visual and residential amenity.

3. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, no room in the proposed house shall be used for the purpose of providing overnight paying guest accommodation without a prior grant of planning permission.

Reason: In order to prevent overdevelopment of the site in the interest of residential amenity and traffic safety.

4. Details of the materials, colours and textures of all the external finishes to the proposed dwelling 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. Water supply and drainage arrangements including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

6. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

7. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and 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.

8. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
 - (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
 - (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

9. All trees within and on the boundaries of the site shall be retained and maintained, with the exception of the following:

- (a) Specific trees, the removal of which is authorised in writing by the planning authority to facilitate the development.
- (b) Trees which are agreed in writing by the planning authority to be dead, dying or dangerous through disease or storm damage, following submission of a qualified tree surgeon's report, and which shall be replaced with agreed specimens.

Retained trees shall be protected from damage during construction works. Within a period of six months following the substantial completion of the proposed development, any planting which is damaged or dies shall be replaced with others of similar size and species, together with replacement planting required under paragraph (b) of this condition.

Reason: In the interest of visual amenity.

10. The developer shall pay to the planning authority a financial contribution 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.

Niall Haverty
Planning Inspector

21st July 2017