



An
Bord
Pleanála

Inspector's Report ABP-300295-17

Development	Construct phase 2 of the estate known as Ceol na Mara phase 2 will consist of the construction of 7 no. additional dwelling houses with connection to public services and ancillary site development works P06/3216 refers
Location	Clooncarabaun, Louisburgh, Co. Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	P16/710
Applicant(s)	Danny Walsh
Type of Application	Permissions
Planning Authority Decision	REFUSAL
Type of Appeal	First Party
Appellant(s)	Danny Walsh.
Observer(s)	None
Date of Site Inspection	14/03/18
Inspector	John Desmond

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1.0 Site Location and Description

- 1.1. The application site is located within the village of Louisburgh in mid-west County Mayo, c.16km west of Westport. The area is characterised by mountains and bogland, interspersed with marginal agricultural land. There are few urban settlements here, with Louisburgh appearing as the most significant settlement west of Westport and north of Clifden. Louisburgh has undergone relatively significant expansion over the last 20 years, with sprawling low-density suburban housing development on all sides, some quite remote to the centre. Many would appear be holiday cottages.
- 1.2. The site, which has a stated area of 0.364ha is situated c.220m northwest of the village square at the centre of the settlement. It is accessed from the public road via an existing suburban housing scheme of 9no. houses, with the application site forming an extension thereto. The site currently appears as a wasteland area, with building rubble and waste soil piled in mounds. It is apparent that the site has been subject to significant infill such as to raise the overall site level (from Google Earth it can be seen that this occurred between 2004 and 2009). Similar infill is evident at the adjacent residential estate to the south and evident on the adjacent site (c.0.4ha) to the northwest onto which the site is open and on which there are also mounds of construction waste.
- 1.3. The application site abuts a housing scheme to the east and another similar development to the south / southwest. To west, north (beyond the said infilled adjacent site) and east are poorly drained agricultural lands, intersected by many deep drainage canals and appeared flooded on the day of inspection. The public road (a narrow rural lane) is adjacent the northeast of the site and party falls within the red line boundary. The said road was flooded (impassable) c.150m to the north of the site on the day of inspection. The northeast boundary and the western end of the southwest boundary encompass deep drainage canals. The drainage canal evident running east-west through the site on the OSI maps, forming part of a more extensive watercourse, is no longer evident on the ground.

1.4. The land in this immediate area is flat and low-lying (below 10m contour line), close (c.185m) to the banks of the Bunowen River, with the historic village and much of the suburban development to the east being located on relatively more elevated lands.

2.0 Proposed Development

It is proposed to construct 7no. detached dwellings

2.1. Further information

The proposed development was amended by way of further information submission reducing the number of houses to 6no., rearranging the layout, including dwellings positions and internal road and parking arrangements.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority sought **FURTHER INFORMATION** on three points: concerning separation distances and land ownership, boundary treatments and landscaping; an advice note appended to the request stated '*development will not be permitted until such time as 70% of Phase 1 has been fully developed, or subject to proven, evidenced based demand ... or an overriding justification...*'

To **REFUSE** permission for 2no. similar reasons pertaining to the **MATERIAL CONTRAVENTION** of Louisburgh LAP zoning objective restricting development on Residential Phase 2 lands until 70% phase 1 lands fully developed, and premature by reference to the order of priority for development in the development plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first Planner's Report (no date, but on or prior to 1/11/16) includes no assessment or analysis but **RECOMMENDED FURTHER INFORMATION** on 3no. points and an advice note to the applicant, consistent with the request for further information issued by the Planning Authority.

The second Planner's Report (27/10/17) considered the proposed development to be generally appropriate to lands zone Residential Phase 2, but that the applicant had not justified the development of Phase 2 lands as requested at FI stage. The Planner recommended REFUSAL for two reasons consistent with the decision issued by the Planning Authority.

Neither report considered the submissions / observations on file.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Two observations were received on file from Peter and Karolina Stavela of no.7 Ceol na Mara, Louisburgh (27/09/16 and 24/10/17 – the latter is in the name of Peter Stavela, alone). The main points raised may be summarised as follows:

- The first phase of the development is a holiday house scheme of which only one is owner occupied, the rest are in rental or occasional holiday use.
- It doesn't contribute to re-populating the settlement which has surplus existing development or to the architectural standard on the Wild Atlantic Way. Developing the site for two or three family houses of appropriate size and individual design is suggested.
- Inadequate separation distances.
- Poor standard of building and low BER rating for the existing houses.
- Inadequate sewerage treatment capacity. Previous issues with same necessitated a reduced number of houses and this has not been rectified. The sewerage pump gets regularly flooded at spring tides with storm surges (this file should be referred to County Engineer, Mr Padraigh Walsh, who is dealing with the issue on behalf of IW).

- Phase 1 has not been completed and is subject of enforcement PE160/12 and has had to be taken over by the Local Authority at public expense and Phase 2 risks a repeat.
- The FI drawings show 22m separation distance only for 2 houses (nos.14 & 15).
- The area is subject of flooding, with a temporary lake lapping against the lands of the Glebe estate, phase 1 and 2.
- No variation in house type.
- Structural damage to houses in phase 1 due to use of rubble beneath raft foundations necessary to rise FFL to avoid flooding.
- The Local Authority had to fund a contractor to repair faulty sewerage pipes in Phase 1. Will the Council put in a supervisor for Phase 2.

4.0 Planning History

No details referred to in the Planners Report. Planning history for the site not located.

Reg.ref.P06/3226: Permission **GRANTED** for a housing development on the adjacent lands to the east (9no. dwellings constructed on site).

Reg.ref.07/2023: Permission **GRANTED** by the Planning Authority (18/12/07) to construct phase 2 (11no. houses proposed) of the estate known as Ceol na Mara permitted under reg.ref.06/3216. Condition no.2 limited the number of houses to 8no.

5.0 Policy Context

5.1. Development Plan

Mayo County Development Plan 2014-2020, encompassing Louisburgh Area Plan Land use zoning objective 'Residential High Density (up to 20 units per hectare)'; 'Residential Phase 2'.

Key-Towns Objective O-02 a. *Implement the land use zoning objectives (see below) in each of the Key Towns; [...]; e. Consider the release of lands phased for residential development where 70% of the lands in Phase 1 have been fully developed and subject to the establishment of evidence based demand for the development in accordance with the Core Strategy and Settlement Strategy of this Plan ([footnote 23:] Lands zoned Residential (consisting mainly of existing built up residential areas) and Residential Phase 1 are the lands which are earmarked for development during the lifetime of this Plan. Phase 2 lands will only be considered for new multi-unit residential development where the relevant criteria applies (see Objective O-07(h¹));*

Key-Towns Objective O-07(i) Residential: *To protect the amenity of existing residential areas and provide further lands primarily for residential development at appropriate densities and ancillary facilities. New residential development on lands zoned Phase 2 shall only be considered where one or more of the following circumstances apply:*

(1) 70% of all lands to which Phase 1 relates is fully developed and subject to the establishment of proven evidence based demand for the development in accordance with the Core Strategy.

(2) There is an overriding justification for development on Phase 2 lands based on changed circumstances that may require the release of additional lands.

(3) Single houses shall only be considered where it is established that the lands in question are part of the overall family land holding and there is no other lands appropriately zoned within the Area Plan boundary

Area Plans for Key Towns – Phasing of Residential Development (defines Phase 1 Lands and Phase 2 Lands and sets out Criteria for development of Phase 2 lands);
Louisburgh; Map LH1 Land Use Zoning for Louisburgh.

5.2. **Natural Heritage Designations**

West Connaught Coast SAC 002998 c.0.9km to the northwest.

Old Head Wood SAC 000532 c.1.3km to the northeast.

¹ This would appear to be an error. The relevant objective would seem to be O-07(i).

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of the appeal may be summarised as follows:

- The proposal would not constitute a material contravention of the Development Plan following provision of overriding justification for release of the subject site, as is provided for under the CDP;
- If the Board considers the proposal a material contravention of the Development Plan there is ample justification for the Board to grant permission under s.37(2)(b) of the Act.
- The principle of the proposed development was established under the previous phase 2 permission granted permission.
- The principle barrier to permission is not the principle but procedural / justification issues in terms of phase 2 order of priority.
- The site does not particularly meet the description of phase 2 lands as it is significantly closer to the Louisburgh Town Centre zone than the phase 1 lands.
- Points of overriding justification:
 - Louisburgh LAP provides particularly limited area of phase 1 lands (in two parcels), yielding c.14no. dwellings whereas 23no. are required for the settlement under the core strategy and undermining the principle of market choice recommended in the DoEH&LG *Guidance Note on Core Strategies* (2010). Need for market choice is overriding justification.
 - Development of 2no. dwellings and 13no. dwellings permitted on phase 1 lands under reg.ref.16/1444 and reg.ref.07/3210, respectively. The latter expires in May 2018 and is therefore unlikely to be delivered. That phase 1 lands are not delivering, despite prioritisation, is overriding justification.
 - At 23no. units, the Core Strategy does not provide any heading (50% would be the norm, increasing the no. of units required to 35no.). The high level of vacant units assumed (54no.) in Core Strategy (56no. in reality)

has not assisted and the Council's *Housing Construction / Acquisition Programme 2017-2021* reports there is a shortage of suitable unoccupied property to purchase in some locations and a critical shortage of property to rent in all locations. These changed circumstances allow for the release of the subject site for development.

- Extrapolating from state housing support requirements for Louisburgh (8no. units comprising 11.9% of Mayo households) under the HCA Programme 2017-2021, 67no. housing units would be required by the housing market in Louisburgh.
 - The proposed development would ensure the completion / resolution of existing estate, for which phase 1 is somewhat unfinished (it has been taken in charge) and which would benefit in terms of amenities.
- Material contravention
 - There are conflicting objectives in the Development Plan and the objectives are not clearly stated in respect of the definition of phase 1 and 2 lands – the former which include unfinished housing estates listed by the Department, having regard to the site being part of an unfinished estate; the latter which includes lands further from the town centre, having regard to the location of the site nearer the town centre (s.37(2)(iii) of the Act applies).
 - The housing crisis has evolved considerably since the adoption of the development plan and 'Rebuilding Ireland', which includes the key objective to increase output of private housing to meet demand, notes the problem of accessing appropriate levels of available zoned land for developers at affordable prices.
 - Circular PL8/2016/APH2/2016 suggests that Government, Departmental and Ministerial policy now significantly emphasizes the urgent need for additional housing and for ready to go development land.

6.2. Planning Authority Response

None.

7.0 Assessment

The main issues arising in this appeal may be addressed under the following headings:

- 7.1 Policy / principle and material contravention
- 7.2 Standards of development
- 7.3 Impact on amenities
- 7.4 Mobility, transport and traffic
- 7.5 Flooding
- 7.6 Appropriate Assessment

7.1. Material contravention

- 7.1.1. Permission was refused by the Planning Authority on grounds of material contravention. According to section 37(2)(b) of the Planning and Development Act 2000, as amended, where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission where it considers that—

- (i) the proposed development is of strategic or national importance,*
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

- 7.1.2. The appellant submits the Board is entitled to grant permission as there are conflicting objectives in the Development Plan and the objectives are not clearly stated in respect of the definition of phase 1 and 2 residential zoned lands – the former which include unfinished housing estates listed by the Department, having regard to the site being part of an unfinished estate; the latter which includes lands further from the town centre. It is argued that the subject site forms part of an unfinished housing estate and it is also highlighted that the site is located closer to the town centre than the phase 1 zoned lands.
- 7.1.3. On the face of it the zoning would appear contradictory to the provisions of the plan concerning definition phase 1 land, however under the Plan phase 1 lands only comprise '*unfinished house estates listed in the Department of Environment, Community and Local Government's National Housing Development Survey 2010 and lands that currently have planning permission for 2 or more housing units that have not yet commenced*'. The applicant has not submitted evidence that the said site can be considered to have fallen within either category at the time of the making of the Plan in 2014 and the Planning Authority was entitled to zone the land phase 2 notwithstanding that the site is more preferably located closer to the town centre than the phase 1 zoned lands. I therefore do not consider that s.37(2)(b)(ii) applies.
- 7.1.4. I would direct the Board to Map LH1 of the Area Plans for Key Towns – Louisburgh under the County Development Plan 2014-2020. The application site is contained within a small block of land zone residential high-density phase 2, the eastern part of which has already been development and which has evidently been designed to accommodate an additional phase of residential development to the west. Indeed, the extension of the existing scheme was previously permitted under reg.ref.07/2023². Furthermore, the application site and the parcel of phase 2 lands of which it forms part, is located a short distance from Louisburgh town centre zone (166m), far closer than the two phase 1 parcels (>555m) and that the development of this site, all other things to be considered, would be consistent with the section 28 guidelines *Sustainable Residential Development in Urban Areas* (DEH&LG, 2009) that '*new development should contribute to compact towns and villages*'. It is apparent that the proposed development is consistent with the pattern of development in the area. I would therefore advise the Board that the provision of

² Only the bare details are available on the Council's website, without mapped data.

s.37(2)(b)(iii) and (iv) of the Act apply and the Board is entitled to grant permission, should it so wish.

7.2. Policy / principle

- 7.2.1. It is an objective (O-07(i)) under the Mayo County Development Plan that new residential development shall only be considered on Phase 2 lands where 70% of the lands in Phase 1 have been fully developed and/or subject to the establishment of overriding justification for development of Phase 2 land based on changed circumstances that may require the release of additional lands. Objective O-02 includes similar provisions, but refers to justification on evidence based demand for the development in accordance with the Core Strategy and Settlement Strategy. There is no evidence that 70% of Phase 1 lands have been developed. Whilst I note the detailed argument put forward by the applicant concerning changed circumstances (market choice, likelihood that Phase 1 permissions will expire without development, headroom above core strategy figures, and amenity benefits to existing estate from completion of the development) I am not satisfied that the applicant has demonstrated that the circumstances have changed since the adoption of the Development Plan.

7.3. Flooding

- 7.3.1. The proposed use, which is defined as a highly vulnerable use under *The Planning System and Flood Risk Management Guidelines* (DECLG, 2009) is located on a site within the coastal flooding zone (flood zone A), as defined by the OPW (draft), where only water compatible development would be considered appropriate. The Guidelines advise that development in flood zone A development should be avoided and/or considered only in exceptional circumstance, subject to the justification test.
- 7.3.2. On the day of inspection flooding was evident on the public road (to the northwest), on part of the site (encompassing drainage canals) and over much of the surrounding lands. There is no flood event recorded in this area on the OPW system (the nearest such event is recorded to the east of the town in 1999 and would appear to be a fluvial event).

- 7.3.3. The Planning Authority produced a Strategic Flood Risk Assessment for the County Development Plan 2014-2020, with a detailed SFRA for each of the Area Plans for Key Towns, including Louisburgh. It identifies fluvial flooding from the Bunowen River to be the principle risk but also identifies potential risk from coastal flooding, with sea level rise resulting in increased frequency in future years. The SFRA notes that residential zoned lands at the north-western boundary of the plan are potentially at risk from coastal flooding and that the sequential approach should be applied to development in these areas.
- 7.3.4. It would appear that the flood zone extent indicated in the Louisburgh SFRA is based on the high level OPW draft data without any refinement. There is no evidence that Planning Authority carried out a justification test in its zoning of lands in making the Development Plan (this would appear to be contrary to the Guidelines), but rather it depends on (and advises that) the sequential approach being applied for the residential lands identified as at risk from flooding, with site specific FRA for sites subject of fluvial flooding.
- 7.3.5. The issue of flooding was not addressed in the Council's assessment or in the application. No Flood Risk Assessment was submitted by the applicant. It is apparent that most of the application site and some of the adjoining lands to the south and east have been raised substantially through infill material (between 2004 and 2009), but no details of same, including finished site / floor levels, are submitted on file. I could not determine whether there is relevant planning history on the application site concerning the raising of ground levels.
- 7.3.6. In the absence of site-specific FRA it is unclear whether the current / proposed site levels are sufficient to raise development above flood zone A (and B) and whether there are potential consequential flood risks to surrounding properties arising from the development, and therefore it would be contrary to the aforementioned Guidelines to permit the development of a highly vulnerable use on these lands. As this is a **NEW ISSUE** the Board may consider giving the parties the opportunity to address or make observations on this issue before making a decision on this case.

7.4. Standards of development

- 7.4.1. **Density** – The proposed development of 7no. units equates to just under 20 units per hectare, or c.16.5uph for 6no. units. The former is consistent with the high-density zoning definition for the site under the Development Plan (20uph). It may be assumed that the density level is a maximum, although this is not clear. The *Sustainable Residential Development in Urban Areas (Cities, Towns & Villages)* (DEHLG, 2009) advise a density standard of between 20 to 35uph on edge of centre sites and the reduced density is not desirable in that context, although within the proposed development it amounts to the reduction of only 1no. dwelling and I do not regard it as a material departure within its context.
- 7.4.2. **Residential units** – The units are all three bed units of 123-sq.m stated gross floor area apiece. There are no concerns regarding the residential amenity afforded by the dwelling units.
- 7.4.3. **Public open space** – No obvious public open space was proposed in the initial layout. The revised layout submitted as further information provided for an area that would appear to be proposed public open space which measures in the region of 250-sq.m. This equates to c.7% of the site area. A public open space standard of 15% site area applies to greenfield / suburban sites, as applies in this instance (notwithstanding the apparent significant infilling of the site), or 10% otherwise. Taking the existing development site and the proposed development site together, the combined area of public open space would be in the region of 10%, although there is some uncertainty as to what parts of the site can be deemed public open space due to the layout and absence of boundary demarcations to the front of dwellings. The applicant does not indicate what areas of the site are to be taken in charge. Furthermore, the 'green area' in the existing development appears to have been subsumed as private open space to the front of no.07, being fully enclosed.
- 7.4.4. Accordingly, it would appear that the proposed development does not meet the 15% standard under the County Development Plan 2014-2020 (Vol.2). The Development Plan allows that the Planning Authority may accept payment of a contribution or the provision of appropriate community facilities in lieu of full open space provision. This is a matter for the Planning Authority, however it has provided no indication as to whether this would be acceptable in this instance.

- 7.4.5. No landscaping plans have been submitted
- 7.4.6. **Private open space** – The Development Plan requires a minimum of 100-sq.m private open space to the rear of the building line, with minimum 10m rear garden depth) for houses of 3-bedrooms or more in housing estates. The revised layout exceeds the minimum standards.
- 7.4.7. The Development Plan requires a minimum 22m between opposing first floor windows. This may not be achieved between the proposed development and the 4no. dwellings to the southwest due to the very shallow rear gardens (maybe 4-4.5m) of those properties. It would be unreasonable to impose an excessive standard on the proposed development to compensate for the layout of the neighbouring development and I consider the rear garden depths of the proposed development to be acceptable.

7.5. **Accessibility and road design issues:**

- 7.5.1. **Connectivity** – The application site is located within c.166m of the zoned town centre of Louisburgh and therefore is well located to facilitate pedestrian and cycle journeys to/from the village. The development would connect in with the existing public footway and carriageway leading to the town centre via the existing infrastructure within the existing development. The pedestrian footway infrastructure to the village is far from ideal, being only on one side of the public road, being locally substandard (but not, apparently, at the front of the site) and being absent for a stretch of 30m north of the entrance to 'The Glebe' housing estate (to the south). However, the public infrastructure off-site is outside the control of the applicant and is a matter for the Local Authority.
- 7.5.2. **Internal layout** - The proposed development continues the traditional suburban layout of car dependent development, including cul-de-sac arrangement, relatively wide carriage and ample car parking. The County Development Plan does not make reference to the current road design standards applicable to this location within the 50kph speed limit zone, the Design Manual for Urban Roads and Streets.
- 7.5.3. The site provides some opportunity to improve pedestrian permeability through the site as it has frontage onto the public road to the east, which falls within the site boundary. This could be addressed by condition, if necessary. In theory a vehicular

access to the said road may be desirable in lieu of the cul-de-sac and hammer head turning area proposed. However, given the poor standard of the said road and the fact that it appears itself to be a cul-de-sac leading to agricultural lands there would be little benefit to providing a through route in the absence of coordinated plans to develop other zoned lands along the said road. In the absence of zoning objectives for the undeveloped lands to the west, there is no justification to provide for future connectivity (pedestrian or vehicular) in that direction.

- 7.5.4. The carriageway and pavement widths are acceptable. 2no. onsite parking spaces are provided for each dwelling, which accords with Development Plan standards. Onstreet parking is the first design response required under DMURS. The existing development provides and the initially proposed layout provided parking in a grouped format, which is more consistent with DMURS. The layout was revised in the further information submission with onsite parking, although this particular amendment was not requested by the Planning Authority. Grouped car parking may provide more opportunity for provision of the required quantity of public open space on site. Given the deeply rural location of the village, a reduced car parking standard would not be appropriate.

7.6. **Impact on amenities**

- 7.6.1. The proposed development, as revised by further information, would not seriously injure the amenities of residential property in the vicinity.

7.7. **Other issues**

- 7.7.1. It is proposed to connect to the public mains sewer. The proposed services layout and sections have been submitted on file. The foul system is facilitated by a pumping station located offsite and within flood zone A. In this regard third party observers to the application have alleged that the pumping station gets flooded during spring tides and storm surges.
- 7.7.2. No surface water drainage details appear to be on file. It is an objective (FS-02) under the County Development Plan to require certain developments in (inter alia) the key town (including Louisburgh) to incorporate the SuDS approach. There is no

report from the Council's engineering sections to inform the Planning Authority's decision.

7.8. Appropriate Assessment

- 7.8.1. Having regard to nature and scale of the proposed development, comprising the construction of 7no. dwellings and ancillary works, the distance the nearest relevant European site to which the site is connected via hydrological pathways (West Connacht Coast SAC site no.002998), and the Features of Interest (Common Bottlenose Dolphin being the Feature of Interest) and Conservation Objectives pertaining to the 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.

8.0 Recommendation

- 8.1. I recommend that permission be **REFUSED** for the reasons and considerations set out under section 9.0.

9.0 Reasons and Considerations

The proposed development is located on lands zoned residential Phase 2 in the Louisburgh Local Area Plan, incorporated into the Mayo County Development Plan 2014-2020. Objective O-07 of the Plan provides that new residential development shall only be considered on Phase 2 lands where 70% of Phase 1 lands have been fully developed or overriding justification for development of Phase 2 lands has been established based on changed circumstances necessitating the release of additional lands. As the Board is not satisfied that it has not been demonstrated that either case applies, it is considered that the proposed development is contrary to an objective of the County Development Plan and to the proper planning and sustainable development of the area.

John Desmond
Senior Planning Inspector

28th March 2018