



An
Bord
Pleanála

Inspector's Report ABP – 302474 – 18

Development	Construction of dwelling house, garage, new site entrance, all associated site works and services.
Location	Whitebeam Avenue, Athlone, Co. Westmeath.
Planning Authority	Westmeath County Council.
Planning Authority Reg. Ref.	187107.
Applicant	Maria Bracken.
Type of Application	Planning Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant	Tom Parker.
Observer(s)	None.
Date of Site Inspection	30 th November 2018.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1.1. Having inspected the appeal site I consider that the site location description provided by the Boards Inspector for a recent appeal case ABP Ref. No. PL25A.246398 at this appeal site is still applicable. It reads:

“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 Whitebeam Avenue 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 site 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.”

2.0 Proposed Development

- 2.1. Planning permission is sought for the construction of a split level 4-bedroom dwelling (Note: 199.9m² gross floor area), a domestic garage, site entrance together with all associated site works and services.

2.2. The applicant is a prospective purchaser of the appeal site and the written consent of the landowner to make this application has been provided.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. The Planning Authority issued a notification to grant permission subject to conditions. Condition No. 7 of the grant of permission requires -

- The disposal of foul and surface water via a separate system.
- It prohibits the combining of foul and surface water.
- Provision of a new foul sewer under the footpath where possible and the reinstatement of footpath to a stated standard.
- The reinstatement of the foul sewer located in the public road carriageway to a stated standard.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The **Planners Report** is the basis for the Planning Authority's decision.

3.2.2. **Other Technical Reports**

- **Roads**

No objection subject to a condition requiring the new entrance to meeting their recommended design and layout stipulations.

- **Area Engineer's**

No objection subject to requiring that the new entrance and surface water drainage meet recommended stipulations.

3.3. **Prescribed Bodies**

None.

3.4. Third Party Observations

None.

4.0 Planning History

4.1. Site and Setting

ABP Ref. No. PL25A.246398

Planning permission for the construction of a split level 4-bedroom bungalow, domestic garage, new site entrance together with all associated works and services was **refused** for the following stated reasons and considerations: -

“It is considered that the proposed construction of a dwelling house on the subject site would contravene materially condition number 2 to an existing permission granted under planning register reference number 34/87 by Westmeath County Council 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.”

In relation to the planning history of the site predating the above appeal case that in December 1972 a housing development was granted for lands encompassing this site (**P.A. Reg. Ref. No. 752/72**). This resulted in the construction of 14 no. bungalows and 6 no. two storey dwellings.

A further 7 dwellings were constructed on foot of grant of permission **P.A. Reg. Ref. No. 34/87**. This grant of permission is relevance to the subject matter of this appeal case as Condition No. 2 required landscaped and planted open space to be provided to the stated reason for this condition was in the interest of residential amenity.

5.0 Policy Context

5.1. National Planning Context

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, (DEHLG, 2009), and, the accompanying Urban Design Manual: A Best Practice Guide, (DEHLG, 2009).
- Project Ireland 2040 National Planning Framework, 2018.

5.2. Local Planning Context

- 5.2.1. The provisions of the Athlone Local Area Plan, 2014-2020, apply. Under this plan the site was rezoned from open space to residential zoned land.
- 5.2.2. Policy P-SR1 of the said plan indicates that the Planning Authority will: *“support the principle of sequential development in assessing all new residential development proposals, whereby areas closer to the centre of the town, including underutilised and brownfield sites, will be chosen for development in the first instance”*.
- 5.2.3. Policy P-SR2 of the said plan indicates that the Planning Authority will seek to encourage and promote development of underutilised infill and backland development.
- 5.2.4. Policy P-RLD3 of the said plan indicates that it is a policy of the Planning Authority: *“to require that appropriate provision is made for amenity and public open space as an integral part of new residential or extensions to existing developments”*.
- 5.2.5. Policy P-RLD7 of the said plan indicates that the Planning Authority will seek to achieve successful urban spaces.

5.3. Natural Heritage Designations

- 5.3.1. None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows.

- The proposed development does not materially differ in any material way from a previous development refused by the Board.
- This development conflicts with a condition attached to P.A. Reg. Ref. No. 34/87.

- The argument that because modern open space standards have evolved and that the site area would only provide substandard open space is not supported.
- Planning history of the site has provided for the site to function as open space.
- The Planning Authority's Director's Memo is not supported as proceedings can be commenced at any time in respect of any condition concerning the use of land.
- The appeal site is privately held because of the Council's failure to seek compliance with conditions attached to the permission for a housing estate at this location.

6.2. Applicant Response

6.2.1. The response is summarised as follows.

- The appellant has sought to gain ownership of this land for his own personal use.
- No action has been taken to turn this land into open space.
- This appeal is vexatious.

6.3. Planning Authority Response

6.3.1. None.

6.4. Observations

6.4.1. No valid observations received.

7.0 Assessment

7.1. Introduction

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issues can be dealt with under the following broad headings.

- Principle of the Proposed Development/ Planning History
- Residential Amenities

- Visual Amenities
- Traffic/Road Safety
- Services

7.1.2. The matter of appropriate assessment and environmental impact assessment also requires consideration.

7.2. Principle of the Proposed Development

7.2.1. The principle of residential development on land that is zoned residential is generally considered to be acceptable, however, in this appeal case I consider that it is complicated by the appeal site's planning history.

7.2.2. This planning history includes a recent refusal by the Board under ABP Ref. No. PL25A.246398 for a similar type of development on the site which was refused on the grounds of it materially contravening Condition No. 2 of P.A. Reg. No. 34/87. This condition imposed a requirement on the developer to provide a landscaped and planted open space on the land that is now the subject of this application.

7.2.3. The Board in its reasons and considerations for refusal considered that to permit the proposed development would set an undesirable precedent in terms of non-compliance with planning conditions attached to a grant of permission. This they concluded would be contrary to the proper planning and sustainable development of the area.

7.2.4. The appeal site forms part of a housing development that was granted planning permission in 1972. On foot of the parent grant of permission part of the housing development was constructed and a further application (P.A. Reg. Ref. No. 34/87) was granted for permission to regularise and retain buildings 'as constructed' in variance from the parent grant of permission. I consider that this grant of retention permission is of relevance to the subject matter of this appeal as it included a condition, i.e. Condition No. 2, which 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*".

7.2.5. Under appeal case ABP Ref. No. 246398 (P.A. Reg. Ref. No. 15/7093), which was an appeal against granting a similar development on the appeal site, the Board's Inspector in their report noted that a survey of the Whitebeam housing estate lands

was prepared in 1991 and that this survey indicated that the open space required by way of Condition No. 2 of grant of permission P.A. Reg. Ref. No. 34/87 had not been provided. The Board's Inspector indicated that in this report the lands were described as unkempt, that they had not been landscaped and that they were fenced off. In addition, they indicated that the subject area should be landscaped and maintained by the developer for a minimum of 1-year on foot of this report and that this had not occurred.

- 7.2.6. I share the view of the Board in their considerations of appeal case PL25A.246398 that it appears to be clear and unambiguous that the site area was earmarked as public open space under P.A. Reg. Ref. No. 87/34. I also concur with their view that there is no subsequent planning history, including infrastructure works that may have occurred after the grant of the parent permission that has altered or revoked Condition No. 2 of the said grant of permission P.A. Reg. Ref. No. 87/34.
- 7.2.7. Like the previous Board Inspector in their assessment of PL25A.246398 I observed that there is only a piecemeal pocket of open space provided on the southern end of Whitebeam Avenue. This public open space is modest in size (c0.17ha) relative to the number of dwellings located on this avenue.
- 7.2.8. I do not accept the Planning Authority's view that the appeal site is not suitable in terms of its size and dimensions to provide usable open space and I share the Board's Inspectors view under PL25A.246398 that the appeal site is of sufficient size to create a play area through to a landscaped pocket of open space which would positively add to the visual and residential amenities of Whitebeam Avenue. Further it is not uncommon to see pockets of open space within housing estates of this size forming part of a hierarchy of open spaces. Moreover, the guidance set out under the Sustainable Residential Development in Urban Areas stresses the importance of open space as well as the importance of accessibility which the site area is for residents of Whitebeam Avenue. This is also reiterated in Policy P-RLD3 of the Development Plan.
- 7.2.9. While there is merit in the provision of dwelling houses on serviced and underutilised lands within suburban areas like these this does not overcome the fact that it was a requirement that the construction of the Whitebeam housing development was to include open space amenity for its future occupants. I also agree that there would

be an expectation that the developer would have sought to carry out the development in a manner that was compliant with their grants of permission, with these grants requiring such provisions by purchasers of dwelling units within this development.

7.2.10. The matter of enforcement of the conditions of a grant of permission are for the Planning Authority to deal with as they see fit. Notwithstanding, I am of the view that in this instance to permit the proposed development would establish an undesirable precedent in terms of non-compliance with planning conditions.

7.2.11. I concur with the Boards Inspector in their report for appeal case PL25A.246398 that to grant permission for the proposed development would establish an undesirable precedent which would be harmful in terms of the finishing of residential estates. This is important as residential estates, when properly designed, are required to provide a careful balance between buildings, private open space amenity, public open space amenity alongside providing the required infrastructure to ensure that they are provide a qualitative environment for future occupants alongside that they are sustainable and add positively to the environment in which they are to be located.

7.3. Residential Amenities

7.3.1. I consider that the overall design and layout of the proposed development to be generally acceptable.

7.3.2. I would raise a minor concern in terms of the ground levels and the finished floor levels of the proposed dwelling in terms of their workability for the proposed dwelling house and the dwelling houses juxtaposition with the surrounding ground levels. Such a matter could be addressed by way of condition should the Board be minded to grant permission for the proposed development.

7.3.3. Despite this concern I raise no significant concerns in relation to the residential amenities for future occupiers of the proposed dwelling and I also consider that residential amenities of properties in the vicinity of the proposed development would not be significantly diminished.

7.4. Visual Amenities

7.4.1. I raise no significant visual amenity concerns in relation to the proposed dwelling in terms of a new insertion into its mature residential streetscape context. Notwithstanding, I consider that the visual vitality and vibrancy of the streetscape of Whitebeam Avenue has been diminished by the lack of landscaping, planting and the provision of useable public open space.

7.5. Traffic/Road Safety

7.5.1. Should the Board be minded to grant permission for the proposed development I advise the inclusion of the requirements set out under Condition No. 7 of the Planning Authority's grant of permission. Subject to the imposition of these requirements I consider that the proposed development would not give rise to any traffic hazard or road safety issue. Moreover, the volumes of traffic a dwelling house of the size proposed would be low and, in my view, the public road network in its vicinity has the surplus capacity to absorb the proposed development.

7.6. Services

7.6.1. The appeal site is located on serviced lands and the public infrastructure would appear to have the surplus capacity to absorb it. The efficient use of serviced underutilised lands is consistent with local through to the national planning policy. I note that Policy P-SR1 and P-SR2 of the Development Plan support the sequential use of such land in urban areas and the provision of a sustainable pattern of development.

7.7. Appropriate Assessment

7.7.1. Having regard to the nature and scale of the development sought and to the nature of the receiving environment, namely an urban and fully serviced location and separation distance to European sites, no appropriate assessment issues arise, and it is not considered that, the development sought would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.8. Environmental Impact Assessment

7.8.1. Having regard to the modest nature the proposed development and wastewater and the distance of the site from nearby sensitive receptors, there is no real likelihood of significant effects on the environment arising from the proposed development. The

need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

- 8.1. I recommend that permission be **refused** for 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 contravene materially condition number 2 to an existing permission granted under planning register reference number 34/87 by Westmeath County Council 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.

Patricia-Marie Young
Planning Inspector

20th December 2018.