



An  
Bord  
Pleanála

## Inspector's Report ABP-303419-19

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<b>Development</b>	10 no. residential units and all associated ancillary site works.
<b>Location</b>	Church Lane , Ballinamore , Co. Leitrim
<b>Planning Authority</b>	Leitrim County Council
<b>Planning Authority Reg. Ref.</b>	1874
<b>Applicant(s)</b>	Drumattan Construction Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Elaine McCormack.
<b>Observer(s)</b>	Rita McWeeney.
<b>Date of Site Inspection</b>	12 <sup>th</sup> March 2019.
<b>Inspector</b>	Sarah Lynch

## 1.0 Site Location and Description

- 1.1. The appeal site is located within the Ballinamore Architectural Conservation Area to the rear of Church Lane, directly south of the existing Sean Bhaile residential development. The lands are currently undeveloped and located in a backland position to the properties along Church Lane c. 150 metres from the centre of Ballinamore town. Two infill plots are included within the appeal boundary which are gated onto Church Lane and sit between two existing dwellings and a dwelling and a derelict building, which is included within the application boundary.
- 1.2. The lands slope downwards in a south westerly direction and are bounded to the north by a 1.5 metre block wall, to the east by existing development along Church Lane, to the south by a mix of hedging and rear walls of existing low-level buildings and to the east by the rear walls of existing single storey commercial buildings.
- 1.3. Rushes are present throughout the site and there is a large stand of conifers to the south of the lands. Japanese Knotweed was noted at the time of site inspection, with significant clusters of this non-native invasive species located adjacent to the boundary wall adjoining the Sean Bhaile development.
- 1.4. The surrounding area is characterised by two storey residential development with commercial properties located to the west along the New Golf links Road.

## 2.0 Proposed Development

- 2.1. Planning permission is being sought for the following:
  - 10 no. Residential dwellings consisting of:
    - 1 no. detached 2 bed dwelling.
    - 6 no. semi-detached 2 storey 2 bed houses.
    - 1 no. infill 2 storey townhouse 2 bed townhouse to Church Lane.
    - 2 storey infill apartment unit consisting of 2 no. 2 bed apartments to Church Lane.
  - Demolition of existing derelict structure.
  - New vehicular entrance off Church Lane and widening of existing entrance.
- 2.2.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission was granted subject to standard conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- Further information was requested in relation to a number of matters as follows:
  - Access road width
  - Road levels and construction details
  - Parking, lighting and services
  - Justification for new development
  - Public open space and landscaping
  - Construction Management Plan
  - Invasive species

The final planners report is consistent with the decision of the planning authority.

#### **3.2.2. Other Technical Reports**

- Access office – additional information was requested in relation to roads, parking and services
- Fire Officer – Fire safety certificate is required.

### **3.3. Prescribed Bodies**

- None

### 3.4. **Third Party Observations**

Three observations were received from neighbouring properties and the residents association of Sean Bhaile, issues raised are as those raised within the grounds of appeal.

### 4.0 **Planning History**

A number of applications for residential developments were withdrawn in 2006 and 2008.

Of relevance is the following:

P01/00612 Planning permission was **granted** for the construction of an infill dwelling.

### 5.0 **Policy and Context**

#### 5.1. **Development Plan**

##### **Leitrim County Development Plan 2015-2021**

The proposed development is located in an area zoned Primarily Residential which seeks 'to encourage high quality residential schemes, with convenient and safe access to local services and a safe and pleasant local environment. Other development, not negatively impacting on residential, will also be open for consideration'.

- Section 4.2.1 – Reinforcement of town centres & reuse of vacant
- Section 4.2.2.3 – Residential development in sites zoned 'Primarily Residential'
- Section 4.2.2.9 – Justification test
- Section 5.3 Residential Development in towns and villages
- Section 5.3.2 Urban Regeneration and renewal
- Section 5.3.3 Density
- Section 5.4.5 Open Space

- Section 5.3.1 – Infill & Backland Development
- Policy 6 – Encourage new residential development in town centres
- Policy 6a – reuse of vacant sites
- Objective 8 – Development of lands zoned ‘Primarily Residential’
- Objective 90 – To protect and enhance ACA’s.

### **Project Ireland National Planning Framework 2040**

- Section 1.2 Making the vision a reality
- Section 4.5 Achieving urban infill / brownfield development

### **Draft Regional Spatial and Economic Strategy for the Northern and Western Regional Assembly**

- RPO 13 – 40% of all new housing to be delivered within built up areas.

### **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) 2009**

- Chapter 6 – Small towns and Villages
- Section 6.9 – Density
- Section 6.11 – Edge of centre sites

## **5.2. Natural Heritage Designations**

None

## **5.3. EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The third-party appeal has been submitted by Elaine McCormack who owns a property situated along Church Lane which backs onto the site of the proposed development. The issues raised within the appeal can be summarised as follows:

- Narrow access.
- Increased traffic congestion.
- Asbestos roof in shed.
- Appellant is seeking to apply for squatters' rights.
- Boundaries of site are larger than shown.
- Gable wall adjacent to appellants kitchen window.
- Access/walkway is beside appellants front door.
- Development will result in reduced parking for business.
- Development is too large for surrounding area to absorb.

### 6.2. Applicant Response

Murphy McGerr Architecture prepared a response to the grounds of appeal on behalf of the applicant which can be summarised as follows:

- Most recent application was withdrawn not refused.
- Proposed development differs from previous application as it significantly improves access to north.
- 2 Cars can pass on proposed access road.
- Reduced density from 13 units to 10 units, adequate car parking and open space.
- Congestion on Church Lane is not the responsibility of the applicant.

- Squatters rights are separate to appeal.
- Proposed development will not impact on use of appellant's property as business.
- An asbestos survey will be carried out and any hazardous material will be removed in a staged process by approved specialist contractors.
- Red line boundary indicates extent of development and does not indicate ownership. Additional lands may be given to appellant.
- Proposed gable wall in front of appellant's Kitchen window is located c.4.8 metres from gable and will not overly obscure light.
- If Board are concerned about impact of development on appellants dwelling, unit 9 & 10 can be re-configured to 2-bedroom units in order to make these units smaller.
- Front door of appellant's house is on the public road and access walkway is on public road also.
- Carparking is adequate.
- Congestion on Church Lane may be alleviated by the provision of a one-way system which has been proposed by the Council Engineer.

### 6.3. Planning Authority Response

Leitrim County Council responded to the grounds of appeal as follows:

- No previous applications made on appeal site have been refused.
- Applying for squatters' rights and ownership of lands are civil matters.
- Issue of asbestos addressed within the C&D Waste Management Plan.
- Pedestrian link provides ease of access to town.
- Proposed development will not result in reduction of car parking to appellants business as proposal provides sufficient carparking to meet the needs of the development.

- Proposed development is in accordance with the Leitrim County Development Plan and is located on appropriately zoned lands.

#### 6.4. Observations

An observation was made by Rita McWeeney and was signed by a number of people living in the vicinity of the site. The issues raised within this observation are similar to those raised within the grounds of appeal, no new issues arise.

#### 6.5. Further Responses

6.5.1. A further response has been received from Liam Madden on behalf of Elaine McCormack and can be summarised as follows:

- Reference to refusal refers to permission not being approved.
- The planning process dictates that the applicant will have to take cognisance of congestion of Church Lane.
- Applicant does not own the lands and lands are not registered.
- The appellant intends to apply for adverse possession.
- Concerns relating to title of lands adjoining access to Sean Bhaile as consent is required from these land owners to apply for permission.
- Clear diminution of day light to appellants rear window.
- Overlooking
- Traffic congestion – similar issues pertaining to congestion of Church Lane.
- Sightlines can not be achieved.

6.5.2. A further response to the applicant's response to the grounds of appeal was submitted by the Leitrim County Council and raises the following issue:

- Whilst the Council is not opposed to the principle of replacing units no. 9 & 10 with 2 no. 2 bed apartments, insufficient details are submitted to allow for an assessment of the impact of this change on the overall configuration of the development.



## 7.0 Assessment

The proposed development is located in an area zoned 'Primarily Residential' which seeks 'to encourage high quality residential schemes, with convenient and safe access to local services and a safe and pleasant local environment. Other development, not negatively impacting on residential, will also be open for consideration'. The principle of residential development within this site is acceptable subject to compliance with the relevant objectives of the County Development Plan and other relevant criteria.

It is important to clarify at the outset that significant further information was requested, and revised plans were subsequently submitted and approved. The following assessment will be based on the final approved plans. The issues pertaining to this appeal are as set out within the grounds of appeal in addition to Appropriate Assessment and management of Japanese Knotweed. The issues for consideration before the Board can be summarised as follows:

- Impact on Residential Amenity
- Access & parking
- Size of development
- Demolition and management of hazardous materials
- Management of Japanese Knotweed.
- Appropriate Assessment
- Other Matters

### **Impact on Residential Amenity**

- 7.1. The grounds of appeal express concerns relating to the proximity of the proposed gable wall of unit no.10 which is located directly to the south west of the appellant's property. This gable wall is sited c. 4.8 metres from the rear windows of the appellants dwelling and will have a finished height of c. 8.3 metres. I note from the plans submitted that the proposed unit will be located at a lower level than the existing buildings along Church Lane as the appeal site slopes downwards from the public road in a westerly direction.

7.2. The resultant level change is c. 2 metres and whilst I acknowledge that this change in levels is advantageous to the scheme in reducing the overall impact of the development in relation to existing development along Church Lane, I consider in relation to no. 10 that the proximity of the gable wall to the main aspect of the appellants kitchen area is unacceptable. The location of unit 10 to the south / south west of the appellants dwelling would result in an unacceptable loss of light and outlook to these windows which would have a significantly negative impact upon the residential amenity of this dwelling. It is of note that the applicant has proposed to alter these dwellings to 2 no. 2 bedroom apartments in order to address any impact on the appellants property, no details have been submitted to demonstrate this proposed revision. In the absence of such details I cannot properly assess the appropriateness of this amendment. In order to address the appellants concerns I consider it necessary to seek the removal of unit no. 10 from the scheme which will provide for a greater degree of separation between the proposed development and the appellants property thus reducing the overall impacts in terms of loss of light and outlook.

7.3. If the Board are of a mind to approve the development I recommend a condition is imposed which seeks the omission of unit 10 in order to provide for a greater separation distance from the dwellings located along Church Lane. Revised layouts will be subject to the agreement of the planning authority.

7.4. **Access & parking**

7.5. Concerns have been raised within the grounds of appeal in relation to the provision of a walkway adjacent to the appellants house. I note from the plans submitted that a pedestrian walkway is proposed between the appellants dwelling and units 1&2. This access lane will be c. 1.8 metres in width and will provide an important pedestrian link from the development to the town centre. I do not consider given the urban setting of the appeal site that the provision of a pedestrian link will impact the appellants dwelling to such an extent as to warrant a refusal.

7.6. Furthermore, Leitrim County Council under Section 4.6.3 of the Leitrim County Development Plan 2015-2021 acknowledges the importance of the Active Travel Towns Programme and supports the development of walking and cycling within settlements. The provision of pedestrian links encourages walking and cycling within

towns and as such I consider the proposed walkway to be acceptable in this instance.

- 7.7. The appellant also contends that the level of car parking provided will not be sufficient to cater for the development and will result in exacerbating congestion along Church Lane. It is also stated that the lack of car parking will negatively impact her business.
- 7.8. Table 24 of the development plan sets out the car parking requirements for residential development. In accordance with this table the proposed development would require 17 spaces of which it is proposed to provide 16 spaces. Whilst I acknowledge the appellants concerns in relation to the congestion along Church Lane the proposed development will cater for car parking arising from the scheme within the boundaries of the development site and as such should not impact or exacerbate the current situation along Church Lane.
- 7.9. It is of note that infill schemes within town centres should, where possible, reduce the level of car parking provision in order to increase the use of more sustainable modes of transport. However, given the size of the settlement, which has a recorded population of 914 at the time of the 2016 census, and the range of public transport available to residents I consider that the level of parking provision provided for within the development is acceptable in this instance.

### **Size of development**

- 7.10. It is contended by the appellant that the proposed development is too big for the area. The appeal site is located c.126 metres north of the town centre and comprises of 10 no.2-bedroom units. The overall density of the site is c. 45 units to the hectare. Section 6.9 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) 2009, supports densities of 30-40+ in such locations. When assessing these types of development, the guidelines specify that regard is had to the quantum and quality of external space provided and that the open space provision is relative to the context of the site.
- 7.11. The proposed scheme provides private open space to the rear of all units ranging from 60sqm to 86sqm with the exception of units 1&2 which contain 2-bedroom apartments. Public open space of 172sqm has been provided at the main entrance to the site.

- 7.12. It is of importance to note that infill development at locations such as the appeal site supports the notion of compact growth which is significantly supported by the policies of the National Planning Framework in which it is an objective to deliver at least 40% of all new housing within the existing built up areas of cities. In order to deliver on the principles of compact growth a degree of flexibility must be provided for in relation to issues such as open space.
- 7.13. Having regard to the foregoing and taking into account the location of the appeal site c. 126 metres from the town centre and that the scheme only provides for 2-bedroom units, I consider that the quantum and quality of open space provided for is acceptable and in this regard, I consider the proposed density to be appropriate to the site.
- 7.14. It is also important to note at this juncture that the removal of unit no. 10 as mentioned within Section 7.3 above would facilitate the provision of additional open space to serve unit no's 1&2. Thus, reducing the density slightly and providing for an improved quality of accommodation for these units.

#### **Demolition and management of hazardous materials**

- 7.15. It is contended by the appellant that the proposed garage for demolition contains asbestos. I note within the applicant's response to the grounds of appeal that it is the intention of the applicant to carry out an asbestos survey and to utilise specialist contractors for the removal of any such material.
- 7.16. Whilst I acknowledge the appellants concerns, I consider that this issue can be dealt with as part of the construction management plan which can be sought by way of condition.

#### **Management of Japanese Knotweed.**

- 7.17. I noted at the time of inspection, that there are significant clusters of Japanese Knotweed present within the appeal site. A Japanese Knotweed Management Plan was submitted with the planning application. The plan identifies that there are 70-100 sqm of Japanese Knotweed present on site in clusters with a number of small plants scattered throughout the site and within adjacent sites.
- 7.18. It is stated within the management plan submitted that the site has been treated with herbicides in October 2017 and July 2018, reference is made to the removal of contaminated soil from the site, as it is stated within the plan that the site is not of

sufficient size to accommodate cell burial. I note from the management plan that the site will be monitored over 2-3 growing seasons in 2019-2020.

7.19. Whilst the plan submitted acknowledges that monitoring is required in order to ensure that the site is free from Japanese Knotweed I consider, if the Board are of a mind to grant permission, that it would be prudent to impose a condition which restricts development on the site until a final report has been submitted to the planning authority which clearly sets out the steps taken to remove the Japanese Knotweed and which also confirms that this objective has been achieved. The imposition of such a condition will ensure that the site has been adequately cleared of Japanese Knotweed prior to the commencement of development.

#### 7.20. **Appropriate Assessment**

7.21. An Appropriate Assessment Screening document was submitted with the planning application. This report identifies the current habitats on site as grassy verge/rank grassland type habitats and notes the presence of Japanese Knotweed within the site. It is stated within this document that there are no drains or streams within the appeal site and therefore no hydrological links to surrounding watercourses. The nearest Natura 2000 site is identified within the document as Cuilcagh Anierin Uplands which is located c. 7.3km north west of the appeal site. The document concludes that the proposed development individually or in combination will have no impact upon Natura 2000 sites.

7.22. Having regard to the foregoing, and the nature of the development which is an infill development on a brownfield site, its location in a serviced urban area, and the separation distance to any 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.

#### **Other Matters**

7.23. The appellant has raised concerns in relation to landownership and the application of adverse possession. This is largely a legal matter and is not one that the Board can finally determine. Section 34 (13) of the Planning and Development Act, states that the granting of permission does not entitle a person to carry out development and

covers the eventuality that the development cannot be implemented for legal reasons.

## **Conclusion**

7.24. In conclusion, subject to the removal of unit no. 10, I consider the proposed development to be in accordance with both the policies and objectives of the Leitrim County Development Plan 2015-2021 and the key tenants of the National Planning Framework in relation to the location and density of the development. The overall layout of the scheme provides for adequate private and public open spaces and circulation areas and I consider that the applicant has adequately demonstrated compliance with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) 2009.

## **8.0 Recommendation**

8.1. In the light of the above assessment I recommend that planning permission be granted subject to conditions for the following reason and considerations.

## **9.0 Reasons and Considerations**

9.1. Having regard to the zoning objective of the site, the provisions of the Leitrim County Development Plan 2015-2021, the existing pattern of development in the area, and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the Architectural Conservation area or of property in the vicinity, or create a traffic hazard for road users. The proposed development would, therefore, 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, 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. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the visual amenities of the area

3. Water supply and drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health

4. Prior to the commencement of development revised plans shall be submitted for the written agreement of the planning authority which illustrate the omission of Unit no. 10 as identified on drawing number 203. Revised plans shall demonstrate a revised layout for unit no. 9 and shall also provide for an enlarged rear open space area to the rear of and for the sole use of units no. 1&2.

**Reason:** In the interest of orderly development.

5. Prior to the commencement of development, the applicant shall submit an Invasive Management Species Action Plan for the written approval of the planning authority which shall include full details of the eradication of the Japanese Knotweed from the site before construction on the site.

**Reason:** In the interest of nature conservation and mitigating ecological damage associated with the development.

6. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste and removal methods and offsite disposal of hazardous materials.

**Reason:** In the interests of public safety and residential amenity

7. 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.

8. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory



completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

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Sarah Lynch

Planning Inspector

17<sup>th</sup> April 2019