



An  
Bord  
Pleanála

## Inspector's Report ABP 303745-19

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<b>Development</b>	11 no. serviced sites and retention of site development works.
<b>Location</b>	Cove View, Baltimore, Co. Cork.
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	18/00049
<b>Applicant</b>	Connolly Property Developments
<b>Type of Application</b>	Permission & Retention Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellant</b>	James Naylor
<b>Observers</b>	Don & Jill Cross
<b>Date of Site Inspection</b>	25/04/19
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

The site, which is approx. 0.88 hectares in area, forms part of a larger 1.55 hectare site accessed via a cul-de-sac lane off what is known as the new By-Pass Road at The Cove in the village of Baltimore and is c. 220 metres to the south of the village centre. The said access also serves two other dwellings. A footpath has been provided along same to the site entrance. The overall lands are elevated and enjoy sea views to the north-west and west. Certain site services including access roads, footpaths and lighting have been developed in the northern portion in which 8 serviced sites are available (Phase 1). These works were permitted under ref. 11/713 (subsequently extended under ref. 17/56).

A mix of single and two storey dwellings (Cove Hill), higher than the appeal site, bound the site to the south with varying boundary treatments. A stream is indicated to run along the southern boundary but has been diverted via a headwall into the drainage system developed in phase 1.

Carbery Terrace, which is a terrace of two storey dwellings, bounds the site to the west with the rear boundaries of same delineated by a block wall. The area to which the appeal refers has been raised and is in the region of 4 metres higher than these dwellings. Salisbury Terrace, which is also a terrace of two storey dwellings, bounds the overall site to the north-west. Again, due to the increase in ground levels the site is higher than the terrace.

## 2.0 Proposed Development

The application was lodged with the planning authority on the 01/08/18 with further plans and details received 17/12/18 following a further information request dated 27/03/18 (time extension for submission of response granted). Prior to this unsolicited further information was received 05/07/18 requesting an opinion as to whether a financial contribution towards the upgrade of the existing playground in the village (c. 100 metres to the north-east of the site) in lieu of a new play area was acceptable to the planning authority. A further unsolicited submission was received 18/11/18 addressing site sections. Revised public notices were submitted 19/12/18.

The proposal entails:

- Retention permission for site development works consisting of raising of ground levels.
- Permission for 11 no. serviced sites and associated site development works including access road, footpaths, lighting and landscaping.

The proposed development is considered to be Phases 2 and 3 of an overall development with Phase 1, for which permission has been secured, providing for 8 no. sites. Access to the proposed development would be through Phase 1 via a looped roadway. The site will also connect to the infrastructure and services provided in phase 1.

The application is accompanied by:

- Planning Statement
- Lighting Report
- Archaeological Impact Assessment
- Waste Management Plan

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant permission for the above described development subject to 28 conditions including:

Condition 2: Dwellings on site nos. 10, 13 and 19 to be single storey only.

Condition 11: Establishment of management company to be responsible and liable for the provision and ongoing management of the development when completed.

Condition 17: Front boundary walls and screen/fences shall be the same design, construction and finish through the development.

Condition 18: Location, design and construction details of any retaining walls, including between plots, shall be submitted to and agreed with the planning authority prior to commencement of development.

Condition 19: Requirements for boundary treatments surrounding and within the development.

Condition 26: Financial contribution in lieu of shortfall of recreational facilities.

Condition 27: Dwellings at sites 10, 13 and 19 to be single storey. The remainder to be one and half storey in height with maximum ridge height to be 7 -7.5 metres or less. Dwellings to be designed to reflect traditional principles of scale, proportion, detail and finish.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The **1<sup>st</sup> Planner's** report dated **27/03/18** states that whilst the principle of development on the site is established the overall quality of the application in relation to numerous planning principles is questionable. The altered site levels may be problematic in terms of impact on adjoining properties. The open space provision is poor and needs to be revisited. A request for further information recommended.

The **2<sup>nd</sup> Planner's** report dated **22/01/19** following further information considers that the proposed tiered boundary treatment along the western boundary and the concrete wall and round bar railing proposed along the southern boundary to the rear of sites 15-19 to be acceptable. Due to the significant changes made to the ground levels and in the interest of residential amenity the height of the proposed dwellings at sites 10, 13 and 19 should be restricted to single storey. It is considered that a financial contribution in lieu of open space would be acceptable which will allow existing facilities to be upgraded at the existing village playground. The comments of the other technical reports (summarised below) are noted. The final schedule for boundary treatments can be agreed by condition. A grant of permission subject to conditions recommended. This recommendation is endorsed by the **Acting Senior Executive Planner** in a report dated **23/01/19**.

### 3.2.2. Other Technical Reports

**Estates Section** in a report dated **06/03/18** notes that there is a private drain crossing the site which serves the dwellings to the south and which connects to the public sewer on the public road to the north. It is proposed to provide a new private common drain at the rear of their properties and to the rear of sites 15-19. It will not be taken in charge by Irish Water. It is unclear as to how access to the wayleave is proposed and whether a right of way/wayleave over the estate road is to be provided to the 5 property owners to facilitate access to the drain. Details required on the diversion of the existing stream/drain and new interceptor manhole and potential effects of flooding resulting from blockages or excessive flows. Details also required on site levels. The **2<sup>nd</sup> report** dated **08/01/19** following further information states that he would have assumed that the owners of the private common drain would also require a wayleave to facilitate access. The site levels are acceptable in principle subject to proper design and construction of all retaining structures. The final schedule for boundary treatment between the serviced sites can be agreed by condition. No objection subject to conditions.

**Environment Section** in a report dated **15/03/18** recommends submission of a waste management plan. The **2<sup>nd</sup> report** dated **14/01/19** following further information has no objection subject to conditions.

**Archaeologist** report dated **16/03/18** recommends an Archaeological Impact Assessment be carried out. The **2<sup>nd</sup> report** dated **06/01/19** following further information notes the conclusions of the Archaeological Impact Assessment. No further intervention required.

**Area Engineer** in a report dated **21/03/18** recommends further information on the proposed wayleave, treatment of open headwall and provisions, if any, to be put in place for surface water that is not piped to the surface water system ie. embankments, green areas etc. The **2<sup>nd</sup> report** following further information dated **09/01/189** considers the issues previously raised have been addressed. No objection subject to conditions.

### 3.3. **Prescribed Bodies**

Inland Fisheries Ireland in a letter dated 23/02/18 has no objection provided Irish Water signifies there is sufficient capacity in the public sewer.

Irish Water in correspondence dated 22/03/18 has no objection subject to conditions.

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

Objections to the proposal received by the Planning Authority are on file for the Board's information. The issues raised are comparable to those set out in the 3<sup>rd</sup> party appeal and observation received and which are summarised in section 6 below.

## 4.0 **Planning History**

**2009** - 08/1216 – permission granted for 23 dwelling units on the overall site.

**2012** - 11/713 – permission granted for 8 no. sites and associated site works as phase 1 on the overall site. This permission was extended under ref. 17/56 until February 2018. The works are substantially complete.

**2017** – Warning letters regarding alleged unauthorised septic tank and recontouring of lands outside the permitted site.

## 5.0 **Policy and Context**

### 5.1. **Cork County Development Plan, 2014**

Baltimore is designated as a key village.

Objective CS 3-2 - establish key villages as the primary focus for development in rural areas in the lower order settlement network and allow for the provision of local services by encouraging and facilitating population growth at a scale, layout and design that reflects the character of each village, where water services and waste water infrastructure is available. Supporting the retention and improvement of key social and community facilities and inter urban public transport.

## 5.2. West Cork Municipal District Local Area Plan 2017

The site is within the Existing Built Up Area of Baltimore.

Section 4.1.10 – the scale of new residential development in the key villages will be in proportion to the pattern and grain of existing development. The future expansion of the key villages will proceed on the basis of a number of well-integrated sites within each settlement.

Table 4.1 - 85 no. dwellings are required in Baltimore over the plan period. The recommended scale of any individual scheme is identified as 12 with schemes in excess of this scale also being considered where it can be demonstrated that the overall scheme layout reinforces the character of the village and the scheme is laid out, phased and delivered, so as to not reflect a residential housing estate more suited to a larger settlement.

Objective GO-01

- (a) Within the development boundary of key villages it is an objective to encourage housing development on the scale set out in table 4.1 in the period 2015-2023.
- (b) The number of houses in any particular individual scheme should have regard to the scale and character of the existing village and will not normally exceed the provision of the number of units set out in table 4.1.

Section 4.3.1 – encourage the consolidation of the village within its rural setting, preserve the unique architectural character and coastal landscape setting of the settlement and to promote sympathetic development in tandem with the provision of services.

Objective DB-01 – within the development boundary encourage the development of up to 85 additional dwelling units for full time occupancy during the plan period.

Objective DB-02 – protect and enhance the attractive coastal setting and landscape character of the village.

Objective U-01 – residential access road to serve adjoining lands for future development.

### 5.3. Natural Heritage Designations

The site is c. 200 metres to the east of Roaringwater Bay and Islands SAC and c.400 metres north-east of Sheep's Head to Toe Head SPA.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The 3<sup>rd</sup> party appeal against the planning authority's notification of decision to grant permission, which is accompanied by supporting detail, can be summarised as follows:

#### 6.1.1. Amenities of Adjoining Properties

- The Primary Planner's report expressed concerns about the layout and design which have not been addressed.
- The recontouring has levelled what had been a site that sloped relatively steeply from SE to NW. This resulted in properties on the southern boundary, including the appellants, having the adjoining land cut away to a depth of in excess of 2 metres. This has left an exposed bank of soil and rock with no retaining wall. The original plans showed a retaining wall to be built. This has yet to happen. Conversely the western and northern site boundaries have been increased by at least 3-4 metres. The estimated final height increase is more than 5 metres. The reasons for doing so are twofold; to allow the surface and foul drainage systems to work effectively and also to provide improved sea views.
- The proposed embankment would seriously impact on the residential amenity of existing properties due to overshadowing, loss of light and loss of privacy. This is a particular issue for Carbery terrace with implications for Salisbury Terrace.
- Condition 27 attached to the decision restricts the ridge height to a maximum of 7-7.5 metres. However the permission granted for phase 1 (under ref. 11/713, 17/56) has an 8-8.5 metre height restriction. It is queried which one applies.



- Condition 13 requires the street lights to be dimmable. It is queried whether this condition applies to phase 1.
- No condition has been attached dictating the time in which the development is to be completed with no conditions relating to days or hours of work.
- No timelines have been attached for the delivering of the Council's requirements set out in the conditions.
- Boundary treatments are not detailed

#### 6.1.2. Site Drainage

- No arrangements have been made in the embankment to capture runoff. This will impact on neighbouring properties. Prior to this development, following a period of heavy rainfall, the area in the NW corner adjacent to No.1 Carbery Terrace would flood. The developer recognised this problem by constructing a runoff catchment pond behind the embankment to temporarily retain this water. While some of the run off would be captured by a new drainage system along the embankment much will still run into adjoining properties.
- Condition 23 does not adequately address this matter.
- The open headwall takes the existing stream and directs it under the site in a 450mm diameter pipe. Detailed proposals are required to prevent access to the headwall sump and for screening. It has not been addressed in the conditions attached to the decision.

#### 6.1.3. Other Issues

- The open space provision is inadequate and does not comply with the Council's Recreation and Amenity Policy 2006.
- The recommendation in the Planner's report to condition occupancy requirements is not included in the planning authority's notification of decision to grant. The resident population of Baltimore is in decline despite the number of residential units increasing. The houses will be used as second or holiday homes and will not be for permanent residents. This is contrary to development plan policy.

- The wayleaves across the site from at least 5 of the properties to the south allowing connection into the public sewer, have been not been revoked or surrendered and need to be recognised in any subsequent transfer of site ownership. Confirmation also required that Irish Water will assume full responsibility for the connections once it takes over responsibility of the overall site.
- Parking control within the site has not been detailed.
- A compliance management plan is required to ensure that all conditions are met by a certain date.
- The Council has not applied consistent conditions to both sites.
- EIA should have been required.

Matters relating to change of Council personnel dealing with the site and the Council's assessment of the case also raised.

## 6.2. Applicant Response

The submission by McCutcheon Halley on behalf of the applicant, which is accompanied by supporting documentation, can be summarised as follows:

### 6.2.1. Amenities of Adjoining Property

- The permitted levels across the site, which were provided indicatively as part of the Phase 1 application, have been carefully considered to ensure that the servicing and infrastructure of the site particularly water, wastewater and storm water, are gravity systems as opposed to pumped systems that connect back into the system constructed within Phase 1. This has led to a permitted reduction in ground level in part of the Phase 1 site and an increase in levels across the remaining lands.
- The application and grant of permission is cognisant of the potential impacts of this recontouring on surrounding residential areas and has been mitigated where practicable.
- Detailed site sections taken through the boundaries with Carbery Terrace and Salisbury Terrace were submitted by way of further information. In all cases

the detailed sections show the minimum separation distances are adhered to save on site no.19 where a distance of c.14 metres is achieved. In a village context this is considered acceptable as both the existing dwelling and the proposed site are at approx. the same level and any adverse impact on privacy or overlooking can be mitigated in the design of the proposed house and future treatment of the shared boundary.

- The landscaped area along the west and north-western boundaries is not intended to be used as active open space and will provide a landscaped buffer.
- Condition 2 of the planning authority's decision requires the dwellings on site nos. 10, 13 and 19 to be single storey only. This will mitigate any impact on privacy from high level overlooking and prevent any future dwellings from being perceived as overbearing.
- The proposal was assessed against the document Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice. The proposal will not have any adverse impact in terms of direct light entering existing adjoining properties.
- Condition 19 requires boundary treatments to be agreed with the planning authority. This will ensure the security of both existing and future dwellings.
- The applicant has reached agreement with the planning authority regarding the proposed boundary treatments within Phase 1 including details of the retaining wall to the appellant's property.

### 6.3. Site Drainage

- Proposed surface water management on site will not lead to any negative impact in terms of surface water flooding on adjacent properties. The adjoining properties will benefit from an improved situation whereby the historic cause of flooding to Salisbury Terrace and Carbery Terrace has been removed.
- The existing stream which ran along the rear boundaries of these properties has been problematic as, in times of heavy rainfall it would pool along the site's north-western boundary often causing surface water flooding in their

rear gardens. To mitigate this Phase 1 included the diversion of the existing stream into the site's surface water system via the headwall to the north of the appellant's property.

- The bowl shape which currently exists on site is a result of the tipping method used by the machine operators and instructions to cease works on site by the planning authority. It is not a runoff catchment pond.
- The permitted treatment along the western and north-western site boundaries of stepped gabions and appropriate landscaping will not enhance runoff as contended. Gabions are noted for not only being a 'soft engineering' method of retaining but also for their permeability to water which slows the velocity of concentrated runoff and provides for good drainage. They will not provide a pathway for runoff to the rear gardens of adjoining property but will mitigate the effect of any surface water by diverting it to ground acting in a similar manner as a soakaway. Notwithstanding, the development also provides for a comprehensive surface water system which will capture any surface water generated on the hard surfaces. Condition 23 of the planning authority's decision is considered reasonable.

#### 6.3.1. Other Issues

- There is a play area adjacent to site no. 11 already permitted in the Phase 1 application. The Council's Recreation and Amenity Policy allows for flexibility. A financial contribution towards the village's existing playground would have benefits for the wider community. There is precedent for such type of an approach.
- A condition requiring full time occupation of the dwellings would be unenforceable as this is essentially a commercial development and should be regarded as same.
- While phase 1 and the current proposal will form part of the overall serviced site, development sites 1 to 8 will be subject to the conditions of the phase 1 permission ref. 11/713 while sites 9 to 19 are subject to the conditions that would be attached in this instance. While there are some anomalies between the two permissions the applicant will apply the appropriate conditions to the appropriate sites/application areas.

- The issues of the headwall are addressed in the further information response. While no specific condition regarding the headwall is included, condition 1 requires the development to be carried out in accordance with the submitted plans and particulars which will ensure the measures are provided on site.
- The Board can attach a condition detailing construction hours and days.
- The permission will last for 5 years. The applicant can begin works at any stage within this period, can seek an extension of the permission or choose not to develop at all. Conditions require the details to be submitted prior to commencement of development. This is the only mechanism available to the planning authority to control the timing/delivery of the development.
- The applicant is aware of the wayleaves across the site. While considered to be a civil matter the wayleaves will be reinstated to the rear of sites 15 to 19 with the connection diverted along this wayleave to the wastewater system running along the new estate road within phase 1. No rights have been removed.
- An EIAR is not required. AA-Screening accompanies the application.

Comments on procedural matters and assessment of the case by the planning authority in addition to details of a public meeting held also included.

#### **6.4. Planning Authority Response**

None

#### **6.5. Observations**

The submission from Dan & Jill Cross who own a property to the south of the site can be summarised as follows:

- The ground level alterations would appear to have been unforeseen. It is queried how such works could be carried out without intervention. The permission allows for the levels to be increased even further.
- The stream that ran at the rear of their property has been removed.

- The sewer serving their dwelling has been moved without any prior communication. No new wayleave has been forthcoming.
- There are no section drawings shown to the south side between site nos. 9 - 1.
- The 1 ½ storey dwelling design permitted is effectively two storey and is unacceptable. Multiple applications will have to be examined.
- An ESB pole has been installed in front of their dwelling. Such electrical supply should be undergrounded.

## 6.6. Further Responses

The applicant's response to the grounds of appeal was circulated for comment.

### 6.6.1. 3<sup>rd</sup> Party Appellant

The submission accompanied by supporting documentation, in addition to reiterating points made in the appeal submission, states:

- The maps referred to in the accompanying documents pertaining to the wayleave have not been included. It is the applicant's legal responsibility to provide amended wayleaves.
- The reason for the retention of the raised ground levels as given previously would support the contention that the new embankment behind Carbery Terrace gives rise to increased risk of landslide/flooding, particularly in the event of heavy rainfall. How increasing the height of the embankment will remove this risk has not been answered.
- It is queried that were a pumped system to be have been considered would the site recontouring have been necessary.
- It is not known what impact the embankment will have on the value of adjoining properties.
- The details provided regarding sunlight and daylight show buildings at the same level. A more accurate representation would be to show a building with a floor level at least 5 metres higher as will be the case in the development.

The guidance document Site Layout Planning for Daylight and Sunlight is mainly intended to address urban development.

- It is factually incorrect that the stream that ran along the rear boundaries of Salisbury Terrace and Carbery Terrace was the cause of flooding. Natural run off from the site causes water to pool behind Carbery Terrace. This is still happening and has been made worse by the fact there is now no absorbent layer of soil. This will not improve once more permanent hard surfaces are constructed. The hole on the site is full of water and has been since it was created
- It is queried whether there are any drainage solutions for capturing run off into the back of Carbery Terrace which cannot be captured by the proposed drainage solutions.
- The proposed provision of the retaining wall along his rear boundary is noted. Any grant of permission should be conditional on this wall being constructed.
- It is queried why the permanent occupancy requirement has been ignored. Such a requirement was not attached to the phase 1 permission. The LAP does not state that in circumstances such as the subject case that commercial developers will be exempt. There are measures the Council can employ to assist in enforcement.
- The applicant's submission makes no comment on the issue of car parking.
- Issues of boundary treatment and security should be clarified prior to permission being given.
- Whether the applicant could seek permission on the area originally set aside for a play area requires clarification.
- Alternative construction hours recommended.
- In the interests of the amenities of adjoining property a project plan should be produced which indicates a date by which all works will be completed.
- Compliance and monitoring of the development by the Council needs to be ensured.
- A screening determination for EIA is required

Details of the public meeting held given.

6.6.2. Dan & Jill Cross

Reiterates points made in their observation.

6.6.3. Planning Authority

No further comment

6.7. **Section 131 Notice**

In view of the site's proximity to the Roaringwater Bay and Islands SAC and Sheep's Head to Toe Head SPA certain prescribed bodies were invited to make a submission on the appeal.

No responses received.

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

1. Compliance with Policy Provisions
2. Site Levels and Drainage
3. Amenities of Adjoining Property
4. Other Issues

7.1. **Compliance with Policy Provisions**

*Background*

The principle of a residential development on the site dates back to 2009 when permission was granted for 23 dwellings under ref. 08/1216 with a subsequent permission granted in 2012 for 8 serviced sites designated as phase 1 of a 3 phase development of the site under planning reference 11/713. The duration of this permission was subsequently extended until 2018 under ref 17/56. The said works have been carried out.



### *Quantum and Density*

As per the current LAP the site is within the development boundary of the village. The plan does not set out zoning provisions per se but requires that development within the boundary complement and be consistent with existing development in the vicinity. In this context the development of the site, which is in close proximity to the village centre and surrounded by residential development, remains suitable for such type development.

The LAP requires that the scale of new residential development be in proportion to the pattern and grain of existing development with the recommended scale of any individual scheme not exceeding 12 units, although schemes with numbers in excess of this will be considered where it can be demonstrated that the overall scheme layout reinforces the character of the village and is phased and delivered so as to not reflect a residential housing estate more suited to a larger settlement. I note that these requirements are reflective of Chapter 5 of the Guidelines on Sustainable Residential Development in Urban Areas which addresses small towns and villages.

In isolation, the proposal for 11 serviced sites would accord with the 12 unit limit, however it is more appropriately assessed in the context of the overall scheme of which it will form part. Taken with that permitted in phase 1 the overall residential scheme will provide for 19 serviced sites. It would equate to a density of 12 units per hectare which is within the Medium B density category set out in objective HOU 1-4 of the Cork County Development Plan. This would appear to be somewhat at variance with the density standards recommended in the Guidelines in that it falls below the minimum recommended for edge of village sites of 15-20 units per hectare and materially below that for edge of centre sites at between 20-35 units per hectare, which I submit, would more appropriately define the site. However, the guidelines note that within a given smaller town or village, there can be marked variations in development context which affect the density of development. In this regard I consider due weight must be given to the pattern of existing development in the immediate vicinity, comprising a mix of older terraced schemes and one off units, and to the pattern and layout of the scheme as developed to date of which the proposal will form an integral part. On this basis I consider that a lower density than that as set out in the guidelines and which complements that permitted to date would be appropriate at this location.

In terms of the overall number of units proposed, as noted above, there are grounds for relaxation of this limit as provided for in LAP and I would concur with the agent for the applicant's view that such a development would allow for variety of house designs which would militate against the potential for a uniform suburban type housing development and thereby provide for a diversity in appearance and character in keeping with the LAP objective seeking the protection of the character of the village. It would also provide for an alternative to urban generated one off housing and would assist in the LAP objective seeking the consolidation of the village and retention of its compact form.

### *Occupancy*

Invariably the nature of the development is so as to provide serviced sites which would be for sale with the buyer then seeking permission for a dwelling on the respective site, subject to the parameters set out in the conditions of the parent permission in terms of design and finishes etc.

The earlier permission under 08/1216 (23 dwellings) by way of condition 4 imposed a condition requiring that not less than 40% of the dwellings to be used solely for permanent full time occupation and in perpetuity, precluding the use for seasonal or holiday accommodation. As per the planner's report on file ref. 11/713 this condition was in direct response to the R02 zoning that pertained to the site in the then applicable 2005 LAP. The planner in the assessment of the proposal subject of 11/713 (8 serviced sites) noted that the lands are no longer zoned for residential development and that the then operative LAP (2011) did not stipulate such a restriction. On this basis no occupancy clause was attached.

Since the Phase 1 application and permission a new LAP has been adopted and whilst objective DB-01 therein seeks to encourage the development of up to 85 additional dwelling units for full time occupancy during the plan period it does not stipulate the application of an occupancy clause on permissions or how the objective is to be realised.

There is no question as to the extent of 2<sup>nd</sup>/holiday homes within the village of Baltimore and, in view of the attractiveness of the settlement and its coastal context, it is reasonable to assume that demand for such type properties will continue. On that basis as to how objective DB-01 can be realised without the application of

occupancy restrictions is unclear. Notwithstanding, neither the County Development Plan nor LAP advocate such controls. In addition, I note that Guidelines on Sustainable Residential Development in Urban Areas, whilst recognising the pressure such villages in coastal locations come under for tourism driven and/or second home type development, does not identify the occupancy clause mechanism as a way to address same. There is nothing precluding persons seeking permanent occupancy from acquiring a serviced site in the scheme and, as noted above, it could provide a reasonable alternative to urban generated/2<sup>nd</sup> home generated demand outside the village. On this basis I would concur with the planning authority and do not recommend such an occupancy condition.

### *Conclusion*

On the basis of the above I consider that the proposal complies with the nature and spirit of the County Development Plan and LAP objectives and is acceptable in principle. Notwithstanding, the acceptability or otherwise of the scheme will be predicated on other planning and environmental considerations being met including the protection of the amenities of adjoining property which I will assess in further detail below

## **7.2. Site Levels and Drainage**

As per the details on file the levels on the site have been altered to allow for the construction of the access road serving the permitted phase 1. This application seeks to retain these alterations. By way of further information site section drawings with the site levels to be retained and those proposed to facilitate the development relative to both the original pre-development levels and levels of adjoining properties are given.

In order to assist in this assessment I consider that it is useful to compare the site layout details and section drawings that accompany file ref. 11/713 and those accompanying the current application.

At the outset I note that the original site falls were from south east to north west with levels to be lowered at the entrance to the scheme and increased towards the western and north-western boundaries. As per the details given on the respective site layout plans I note that the finished floor levels (FFL) of each of the 19 no. serviced sites are the same.

Section Drawing A-A on both files delineates the southern portion of the overall site where the levels are to be lowered. The reductions in each instance are the same save for the south-western most corner. In the current proposal site No. 19 is to have a level which is 0.3 metres lower than that originally anticipated and will have a FFL of 25mOD. This is comparable to the FFL of the single storey dwelling which bounds the site to the west.

Section Drawing B-B on both files delineates the section through the site to the western boundary to Carbery Terrace. The levels as given on the earlier file are the same as that currently proposed. Levels at site no. 13 are to be increased by 2 metres from 22mOD to 24mOD. The embankment, itself, will result in an increase in levels of c. 3.8 metres. The FFL of the nearest dwelling in Carbery Terrace is 20.23mOD

File ref. 11/713 did not have section drawings north-south through the lands, thus a comparison with the current proposal is not possible.

Section Drawing C-C delineates the reduction in the site levels along the southern boundary with the increase in site levels toward the north-western boundary of 3.2 metres. The FFL of the nearest dwelling to the north-west is given as 14.1mOD.

Section Drawing D-D again delineates the reduction in levels along the southern boundary with an increase in site levels along the northern boundary of approx. 1 metre with the FFL of site no. 10 being 25mOD. I note that site no.8 which was permitted in Phase 1 will have a finished floor level of 26.6mOD. The stated FFL of the nearest dwelling in Salisbury Terrace is 14.250mOD.

By reason of the original site topography and levels relative to those to the west and north, development of the site for residential purposes was always going to be elevated above same. I submit that the differential between the levels as proposed on the site and that of the lands adjoining may not have been necessarily apparent on the previous application, in that details of same were not provided in the drawings. This has been done so in the current application.

In the context of what has been permitted to date I consider that the site levels are acceptable. I consider that the impact of the increased levels and how they are to be treated along the shared boundaries will be of paramount importance in terms of the amenities of adjoining property. In terms of the boundary to Carbery Terrace

and the dwelling to the north-west a gabion basket wall and landscape buffer with planted pocket along the uppermost part of the gabion basket to allow for an extended landscape buffer is proposed. A 1.1m high retaining wall with a natural stone face is proposed inside the existing 1.0 m high natural stone boundary to Salisbury Terrace. I consider these measures to be reasonable and will assist in softening the visual impacts of the retaining structures.

The stream that ran to the rear of the properties bounding the site to the south has been diverted into the site's surface water system via the headwall to the north of the appellant's property. Whilst there is a lack of consensus between the parties as to the original course of the stream and whether or not it was the cause of periodic flooding in the north-western boundary, it is reasonable to conclude that its diversion will provide for an improved situation.

Surface water runoff from the development will be directed to the aforementioned surface water system. The proposed boundary treatments along the western and north-western site boundaries, as detailed above, which include stepped gabions and appropriate landscaping provide a 'soft engineering' method of retaining which are permeable to water and will mitigate the effect of any surface water by diverting it to ground acting in a similar manner as a soakaway.

I would accept the applicant's statement that the bowl shape which currently exists in the centre of the site is not a runoff catchment pond and is a result of the tipping method used by the machine operators prior to works ceasing on site following the warning letter issued.

In terms of securing the headwall it is proposed to put a reinforced concrete roof with open grating for access which will be lockable. The details are provided on drawing no.08 received by way of further information. Whilst the proposals form part of the development a condition requiring the applicant to confirm the timescale by which the works are to be completed could be attached in the interests of clarity.

I consider that the measures to be put in place are acceptable and will not give rise to increased flood risk of adjoining properties.

### **7.3. Amenities of Adjoining Property**

The effluent disposal from the dwellings that bound the site to the south (Cove Hill) was originally via a drain that crossed the site connecting to the public system to the

north and was subject of wayleaves. To allow for the development of the site this arrangement has been removed and a temporary septic tank was installed. Following the Council's warning letter, the tank was removed, and the dwellings connected into the foul sewer system developed on the site. This is to be diverted to the rear of nos. 16 to 19 with a 5 metre wayleave proposed to allow access to both the sewer and headwall. The applicant has submitted details with the appeal response as to the revised wayleaves for the affected landowners. The arrangement is considered acceptable subject to suitable treatment and security of access. I consider that any further contention in terms of the wayleave is a civil matter for resolution between the respective parties.

It is noteworthy that Phase 1, by way of condition 2 attached to file ref. 11/713, allows for dwellings to be either 1 ½ or two storeys with a maximum ridge height of between 8 and 8.5 metres. The planning authority in this instance limits dwellings on sites 10, 13 and 19 to single storey with the remainder to be 1 ½ storey with a maximum ridge height of 7 – 7.5 metres or less. In view of the level differentials between the appeal site and the lands to the west and north-west, the restriction of the dwelling types on site nos. 10, 13 and 19 to single storey is appropriate so as to limit the visual impact of the scheme from adjoining properties. The parameters as placed on the remaining, whilst less than permitted in phase 1, will provide for an appropriate gradation in height across the development and takes cognisance of the fact that the site will be elevated over the lands to the west and north-west.

In terms of site nos. 16 to 19 I note that the FFLs will be between 2 and 3 metres lower than the dwellings bounding the site to the south. Appropriate separation distances can be maintained to ensure privacy. The rear boundary walls of the proposed site by reason of the need to maintain a wayleave will be set back 5 metres from their boundaries. The applicant notes that said properties have existing sod/stone ditch or timber fence or post and wire fence which will be retained and supplemented where required. A retaining wall to the appellant's property is proposed.

A distance of over 35 metres is to be maintained between site no. 13 and the properties in Carbery Terrace which, when coupled with the dwelling height restriction, is acceptable and would not impact on daylighting or sunlighting. The dwellings in Carbery Terrace have rear gardens of between 11 and 15 metres in

length. As noted above certainly the increase in site levels and the boundary treatment will have an impact on their visual amenities but I consider that the proposed treatment and landscaping proposed will assist in reducing this impact. I consider that a detailed landscaping plan with timescale for completion of works to be appropriate in this instance.

I am therefore satisfied that subject to appropriate conditions in terms of dwelling heights, boundary treatment and landscaping that the proposal would not have an adverse impact on the amenities of adjoining property as to warrant a refusal of permission.

#### **7.4. Other Issues**

The open space indicated in the centre of the site is subject of the permission under ref. 11/713 and, as confirmed by the applicant, will be developed. The further open space requirements to serve the subject scheme was subject to consideration during the assessment of the file with the local community council requesting the applicant to consider a financial contribution in lieu of the provision of a playground, to be applied in the upgrading of the existing village playground approx. 100 metres to the north.

As noted by the applicant the Council's Recreation and Amenity Policy allows for flexibility in application and consideration of a contribution in lieu of provision within a site in certain circumstances. In view of the site's location in close proximity to the village centre and the proposed open space provision to be developed as part of Phase 1 I consider that there is merit in such a financial contribution towards the village's existing playground which would have benefits for the wider community. I therefore concur with the planning authority's approach and recommend a condition comparable to condition 25 attached to its notification of decision to grant permission.

Construction hours in line with standard practice would be attached by way of condition.

The duration of the permission is for 5 years in which the works will be required to be carried out. Any subsequent development of the serviced sites will be subject to planning and will require the submission of an application which, should it be secured, would also have a period of 5 years within which to carry out the

development. I accept that the duration in which development could be carried out on the site as a consequence of this process could be lengthy.

While phase 1 and the current proposal will form part of the overall serviced site development sites 1 to 8 will be subject to the conditions of the phase 1 permission ref. 11/713 while sites 9 to 19 would be subject to the conditions that would be attached in this instance.

Issues of control of on street car parking is a matter for the relevant management company who shall assume responsibility of the scheme.

The issues raised in terms of the newspaper publication used for the public notice and the assessment of the application by the planning authority are not matters for comment or adjudication by the Board. The application and public notices were validated by the planning authority.

#### *Environmental Impact Assessment*

The proposal is for 11 serviced sites, only. In itself, it is not a class of development set out in Schedule 5, Part 1 or 2 of the Planning and Development Regulations, 2001, as amended.

Should the 9 dwellings which will be facilitated by the proposed works be taken into consideration with that already permitted, 19 dwellings are proposed. This is significantly below the threshold of 500 dwellings units set out in Class 10 (b), Part 2, Schedule 5 of the Planning and Development Regulations for which EIA is required. In view of the nature, scale and extent of the development, its proximity to Baltimore village centre within its development boundary and to the pattern of development 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.

#### *Appropriate Assessment*

The site is c. 200 metres to the east of Roaringwater Bay and Islands SAC and c.400 metres north-east of Sheep's Head to Toe Head SPA with the intervening area developed. The planning authority carried out a screening and concluded that a stage 2 Appropriate Assessment would not be required.



Following the diversion of the stream to the local storm water system as part of the Phase 1 development there are no identifiable direct hydrological links connecting the site and the designated sites.

Having regard to the nature and scale of the proposed development within the development boundary of Baltimore on a fully serviced site, no appropriate issues arise and I consider that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

## **8.0 Recommendation**

Having regard to the above I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

## **9.0 Reasons and Considerations**

Having regard to the nature and scale of the development proposed within the development boundary of Baltimore and to the planning history on the site, 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 of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. 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 as amended by the further plans and particulars submitted on the 17<sup>th</sup> day of December 2018, 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. Prior to the commencement of construction of any future proposed dwelling, the roads, footpaths, watermains, drains, lighting, other services and landscaping shall have been completed to the written satisfaction of the planning authority.

**Reason:** In order to ensure the co-ordinated provision of site development works/services for the proposed development.

3. The design of the houses on the serviced sites shall be in accordance with the following criteria:

- (a) Dwellings on site nos. 10, 12 and 19 shall be single storey only. Any future dwellings shall not exceed seven metres in height from finished ground floor level to finished roof ridge level.

- (b) Dwellings on sites nos. 9, 11, 12, 14, 15, 16 and 18 shall be one and half storey. Any future dwellings shall not exceed seven and half metres in height from finished ground floor level to finished roof ridge level.

- (c) All dwellings shall be designed to reflect traditional principles of scale, proportion, detail and finish.

**Reason:** In the interest of visual amenity and protection of amenities of property in the vicinity.

4. (a) Front boundary walls shall be of the same design, construction and finish throughout the development.

(b) Rear garden boundary walls and screen walls shall be 2 metres in height.

Plans and details to provide for these requirements, including materials and external finishes, 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. The following details shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

(a) The location, design and construction details of all retaining walls and gabions proposed to be constructed and timescale for completion of the works.

(b) The timescale for the completion of the proposed works to the headwall as detailed on drawing no.08 received by the planning authority on the 17<sup>th</sup> day of December, 2018

**Reason:** In the interest of public safety.

6. 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.

7. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

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

8. The internal road network serving the proposed development shall comply with the detailed standards of the planning authority for such road works.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

9. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

10. The development hereby permitted shall be carried out and completed at least to the construction standards set out in the “Recommendations for Site Development Works for Housing Areas” issued by the Department of the Environment and Local Government in November 1998.

**Reason:** To ensure that the development is carried out and completed to an acceptable standard of construction.

11. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) A plan to scale of not less than 1:500 showing –

(i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder

(ii) Details of screen planting which shall not include cupressocyparis x leylandii

(b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment

(c) A timescale for implementation

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of residential and visual amenity.

12. Proposals for an estate name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

13. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for

and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

14. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

15. 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.

16. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to

commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

**Reason:** In the interest of sustainable waste management.

17. 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.

18. 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.

19. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of open space and recreational facilities. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**May, 2019**