



An
Bord
Pleanála

Inspector's Report

ABP-309254-21

Development	Construction of 12 no. residential units
Location	Farnham Road, Drumnavanagh, Cavan
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	2034
Applicant(s)	Vogue Homes
Type of Application	Permission
Planning Authority Decision	Permission
Type of Appeal	Third Party
Appellant(s)	Sheelin & McCabe Planning Services
Observer(s)	None
Date of Site Inspection	18 th of May 2021
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The application site is located on the western side of Farnham Road to the south of the junction with the R198 and is within the residential area in the Cavan Town & Environs boundaries. There are two no. apartment blocks on different levels to the south east of the site known as 'Farnham Court'. There is a two-storey detached house to the north west and apartments to the north of this. There is also housing Drumnavanagh housing estate on the opposite side of the road.
- 1.2. The site is roughly rectangular in shape and while the levels in the front part are lower it then rises upwards from the road level to a steep topography at the rear from a south-west to north-easterly direction. The area to which the proposed application relates has undergone significant ground works in the past and now has reduced levels. It is overgrown with some trees and shrubs along the site boundaries including the road frontage and to the NW and interspersed throughout the site. Access is provided via a field gate from Farnham Road.
- 1.3. There are some Recorded Monuments to the south west of the site including 'Swellan Fort". The junction with Drumnavanagh housing estate is located to the north east on the opposite side of Farnham Road. This is a fast busy road, with a continuous white line down the middle in the vicinity of the site. While there is a footpath along the opposite side of the road there is no footpath along the site frontage. There are no cycleways in the vicinity.

2.0 Proposed Development

- 2.1. Planning Permission is sought to erect a fully serviced residential development consisting of 12no. residential units, as follows:
 - (a) 1no. two storey terraced block containing 4no. 3 bed and 4no. 2bed units;
 - (b) 1no. 3 storey block containing 3no. 1 bed apartments with own door entry and
 - (c) 1no. 3 bed semi-detached dwelling;
 - (d) Entrance with entrance walls and piers, car parking, bin store, connection to foul & surface water sewer and all associated works

All on a site of 0.47ha at Farnham Road, Drumnavanagh, Cavan.

2.2. Documentation submitted with the application on behalf of the Applicant from Wynne Gormley Gilsenan Architects & Surveyors Ltd. includes the following:

- A Design Statement which provides a brief description and rationale for the proposed development.
- Drainage Details from Alan Traynor, Consulting Engineers.

3.0 **Planning Authority Decision**

3.1. **Decision**

On the 21st of December 2020, Cavan County Council, granted permission for the proposed development subject to 23no. conditions. These generally concern design and layout, development contributions, infrastructural issues pertaining to roads and drainage, construction and waste management, landscaping and public lighting.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The Planner had regard to the locational context of the site, planning history and policy, to the interdepartmental reports and submissions made. Their Assessment included the following:

- They have regard to issues of design and layout and note the mix of residential units proposed. They note the constraints of the site and are satisfied with the overall design and layout proposal.
- The principle of development is acceptable on these zoned Residential Phase 1 lands.
- This is a medium density development which they consider acceptable.
- They have regard to the distance from Natura 2000 sites and consider that an AA is not required.
- There are no archaeological features within the site. The nearest site is the recorded monument - Ringfort/Rath which is 150m uphill from the subject site.

Further Information Request

The Council considered that there are a number of issues outstanding and recommended that F.I be requested to include the following:

- A site section indicating the height of the proposed construction of the retaining wall to the rear of the units;
- A revised site layout indicating enhanced proposals for public open space and the design of the development when approaching the town centre.
- The location of public street lighting proposed for the communal areas within the site.
- A comprehensive and detailed Construction Waste Management Plan.
- To engage with Irish Water relative to the feasibility of providing connections.
- To submit details in accordance with the requirements of the Road Design Section to include in summary a Stage 1 & 2 Road Safety Audit of the development and its junction with the public road.

Further Information Response

It is noted that the applicant was subsequently granted a time extension and the submission of the F.I. Wynne Gormley Gilsenan's response included the following:

- They refer to the redesign elements in revised the Site Layout Plan. All residential units are designed in accordance with the current residential guidelines.
- They refer to a section through the site indicating the extent of dig to the rear and the height of the retaining wall.
- The Site Layout Plan includes the public lighting for the communal area of the site.
- A Construction Waste Management Plan has been submitted.
- They include a pre-enquiry response letter from Irish Water.
- They refer to the revised plans submitted showing the details requested by the Road Design Office. These include relative to the junction, parking, and footpaths.

- A Stage 1 & 2 Road Safety Audit of the development and its junction with the public road has been submitted.
- Revised Public Notices were submitted.

Planner's Response

The Planner had regard to the F.I submission, including the revised plans and documentation submitted and their response included the following:

- They have no objection in principle to the proposed development. They recommend that the standard condition for road construction and layout should apply to any grant of permission.
- The communal open space is limited to peripheral areas of the site as the rear embankment is elevated and is not usable.
- They consider that the revised layout has addressed the concerns raised in the F.I and is acceptable particularly given the constraints of the site.
- They note that a Construction Waste Management Plan has been submitted.
- They also note the details submitted in response to Road Design issues including the Stage 1& 2 Road Safety Audits.
- They provide a breakdown of Development Contributions.
- They have no objection to the revised plans submitted and recommend that permission be granted subject to conditions.

3.3. Other Technical Reports

Road Design Office

They recommend that F.I be sought relative to road design and safety issues, including the provision of a raised junction table, carparking spaces, junction radii, 2m wide footpath along the full R198 road frontage, and Stage 1 and 2 Road Safety Audit to be provided and to be submitted in a revised Layout.

In response to the F.I submission, they provided that they have no objections subject to recommended conditions.

Waste Management Section

They recommend that F.I be sought relative to the submission of a detailed Construction and Waste Management Plan.

3.4. **Prescribed Bodies**

Irish Water

They recommended that F.I be requested on a number of issues. In response to the F.I they have no objections subject to recommended conditions.

An Taisce

They provide that consideration is required on physical integration of the proposed development into existing and future proposed development in the area.

Sustainability indicators require assessment of traffic in the area.

3.5. **Third Party Observations**

A letter of objection was received from Sheelin & McCabe, Planning Services Ltd. As these are the subsequent Third Party their concerns are considered in the context of their Grounds of Appeal in the Assessment below.

4.0 **Planning History**

The following is relevant to the subject site:

- Reg.Ref.03/1508 – Permission granted subject to conditions to Michael Ferguson for the erection of 21no. apartments in 1no. 4 storey block. This was subsequently granted subject to conditions on appeal by the Board – Ref. PL02.208549 refers. It is noted that 1no. larger extended block is shown on the revised plans.
- Reg.Ref.04/711 – Permission granted subject to conditions to Michael Ferguson for the demolition of existing dwelling and construction of 54no. apartment units in 3no. separate 3 to 4 storey blocks, over basement car parking. This was subsequently refused on appeal PL02.208792 refers. The reason for refusal was as follows:

Having regard to the topography of the site and to the layout, form, scale and bulk of the proposed development on the site and in relation to site boundaries, particularly along the main road frontage, it is considered that the proposed development, which requires significant excavation and removal of trees, would result in a form of development out of character with the pattern of existing and permitted development in the vicinity and would seriously injure the amenities of the area and property in the vicinity.

It is of note that the Board Direction provided: In consideration of the appeal the Board considered the general design and architectural expression proposed in the original scheme was preferable to that granted by the planning authority. The Board considered that this issue would constitute a new issue and therefore decided to refuse permission for one substantive reason only.

Copies of these decisions are included in the History Appendix to this Report.

It is of note that to date the site remains undeveloped.

5.0 Policy Context

5.1. National and Regional Planning Policy

- Project Ireland 2040 National Planning Framework (2018)
- Regional Spatial Economic Strategy 2020-2032 (RSES)
- Regional Planning Guidelines for the Border Region 2010-2022
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (DECLG, 2018) and as updated (2020)
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018)
- Design Manual for Urban Roads and Streets 2019
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual) 2009

- Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities (2007)
- Smarter Travel – A Sustainable Transport Future: A New Transport Policy for Ireland 2009-2020
- The Planning System and Flood Risk Management 2009 (including the associated Technical Appendices).
- Appropriate Assessment of plans and projects; Guidelines for Planning Authorities.

5.2. **Cavan County Development Plan 2014-2020**

Section 2.5.1 provides the Settlement Hierarchy and notes that Cavan Town as the County Towns is at Tier One at the top of the hierarchy. It has been classified as a hub town in the NSS and the BRPG. The town is of strategic importance within the Border Region and has excellent transport linkages nationally, regionally and locally. It is classified as a Large Town in the census with a population in excess of 12,000. The Cavan Town & Environs Development Plan provides greater details and specific policies and objectives with regards to this town.

5.3. **Cavan Town & Environs Development Plan 2014-2020** (as amended by Variation no.1 of 2018).

Land Use Zoning

The site is zoned “Residential – Phase 1” under Variation 1 of the Plan.

The Objective is to provide for sustainable residential development and to protect and improve residential amenity.

Residential is permitted in principle in this land use zoning.

Vision – To promote the development of balanced communities and ensure that any new development in existing residential would have minimal impact on existing residential amenity. New housing and infill developments should be of sensitive design which is complementary to their surroundings. Residential development shall ensure the provision of high quality new residential environments with good layout

design and adequate private and public open space and also provide an appropriate mix of house, sizes, types and tenures. No piecemeal development can take place unless it does not conflict with the possible future development of the reserved development areas of the town.

Development Management Standards

These are set out in Chapter 9 and include policies and objectives for the provision of high-quality housing design and layout within the plan area. This includes regard to appropriate densities, residential mix in houses and apartment development, public and private open space and connectivity and permeability.

5.4. Natural Heritage Designations

The site is located within the buffer area (c.2.4kms) of Lough Oughter and Associated Loughs SAC (site code: 000007) and SPA (site code: 004049).

5.5. EIA Screening

Having regard to the nature and scale of the proposed development on residentially zoned lands and the nature of the receiving environment, 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

Sheelin & McCabe Planning Service Ltd., have submitted a Third Party Appeal against the Council's decision to grant permission. Their Grounds of Appeal include the following:

Administrative issues

- They note the proposed site is in the ownership of Crosserlough Construction Ltd and provide the Folio number. The application is in the name of Vogue

Homes which is a registered business and not a legal entity, and they have concerns about ownership issues and the legitimacy of the application.

- They provide that a synonym name has been used, which is not an entity that any person living locally would identify with the site.

Design

- They have serious concerns about design issues and that the proposed development in its present form will seriously injure the amenities of the area.
- It destroys the visual character and amenity of the area, and is overlooked by the detached dwelling, rear garden and conservatory to the north west.
- It would cause overlooking and loss of privacy to that dwelling and result in diminution of that property.
- The Building Line will be broken by this development to the detriment of the area. The use of the site should be in keeping with adjoining buildings and with the established building line, with the apartment complex to the south and residence to the NW.
- The proposed development represents an inefficient use of the lands. The design is substandard and is not in keeping with the area.
- The proposal would be contrary to the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual.
- It would also be contrary to “Project Ireland 2040 – National Planning Framework” and D.M.U.R.S and the proposal would be contrary to the proper planning and sustainable development of the area.

Private Rights

- A septic tank, percolation area and reserve percolation area are located in the north western corner of the site, which serves the single dwelling to the NW. This dwelling and associated wayleave and easements on the subject site are to the benefit of Declan and Ann Breslin. An Affidavit from Declan Breslin is attached, setting out the legal position.

- A substantial part of the percolation area is located on and adjacent to the proposed entrance area.
- They refer to the history of the site and note that Mr Breslin's right of way/easement to his septic tank and percolation area will be affected by the proposed development. Any disturbance will render it unworkable and pose a threat to public health.
- While it is generally contended that the issue of ownership and rights over land are a civil matter, it is their contention that where a Local Authority consents to a planning application knowing that such rights over land exists, they may be compliant in some way in giving a license to the applicant to proceed.
- The applicant and/or the Council are negligent in not giving consideration to these issues and Mr Breslin's wayleave/easement rights, particularly when both parties should have been aware of the existence of same.

National Monument

- There is concern that the proposal may impact on archaeology. Swellan Fort, a National Monument (CV000609-Rath) is c 150m from the site. Given the scale, extent and location of the proposed development it is possible that subsurface archaeological remains could be encountered during the construction phases that involve ground disturbance.

Traffic

- The proposed development is premature pending the infrastructure necessary to provide safe passage to pedestrians, cyclists and would endanger public safety by reason of traffic hazard.
- The volume and speed of traffic using this road would appear not to have been recognised or captured in the traffic report prepared for this application. In particular the frequency and speed of ambulances is of concern.
- They note the number of schools and businesses using this road and provide details of traffic congestion in the area.

Noise/Disturbance

- The proposed development will give rise to light pollution to the detriment of the residents of the detached dwelling to the NW. The enjoyment of peaceful residence in this dwelling will also be seriously damaged by the increased traffic flow in and out of the proposed site.

Amenity Area

- They note the constraints of this narrow steeply sloping site, and mature planting. They are concerned about the retaining works and note the land slide danger to residents particularly during periods of flooding.
- The proposed development is lacking in property amenity area and relies on balconies to provide same.
- A Visual Impact Assessment has not been provided. The elevation of this site is such that the proposed buildings will be visible from the countryside located North, NE and East.

6.2. Applicant Response

Genesis Planning Consultants have submitted a response on behalf of the First Party to the Grounds of Appeal. They have regard to the locational context, planning history and policy and to the submissions made. Their response includes the following:

Summary

- They submit to the Board that the decision made by the Planning Authority is the correct assessment.
- They note that this application will be considered 'de novo' by the Board and submit a revised site layout incorporating:
 - (i) The decommissioning of the unauthorised septic tank on the lands
 - (ii) The provision of a foul sewer line to connect the foul line from neighbouring lands into the Irish Water network as part of the site works.
 - (iii) Amendments to private amenity space for the apartments.

- They submit that decommissioning the septic tank and direct connection provided to the Irish water network is a clear opportunity for environmental improvements, as the septic tank is unauthorised and not performing to EPA standards given no percolation area exists. They refer to the accompanying note from Traynor Environmental in this regard.
- The revisions to the apartments are in full compliance with the design standards of the Apartment Guidelines 2018 in terms of private amenity space standards.
- In terms of the legislative basis for such minor amendments they note that there are no statutory provisions governing the amendment of a planning application or appeal and it is a matter for discretion of the planning authority or the board.
- They provide details of connections proposed for the adjoining dwelling to the public mains and the decommissioning of the septic tank to ensure no prejudice to third parties or environmental risk arising.

Principle of Development

- The proposal complies with current planning policies and guidelines and they provide a summary and discussion of those relevant. This includes reference to National, Regional and Local policies.
- The proposal also complies with the Core Strategy of the Cavan Town and Environs Development Plan 2014-2020 and to Residential Management Standards. This includes regard to the Urban Design Manual – A Best Practice Guide (2009).
- The proposal is a welcome urban infill scheme wholly consistent with relevant national, regional and local policy. They also note the residential zoning.

Administrative issues

- In the context of the legal standing of Vogue Homes as part of the group which owns the subject lands, they submit there is no basis for the grounds of appeal by the appellant under ‘administrative issues’.

- Specifically, the requirements of Article 22(2)(g) of the Planning and Development Regulations 2001 (as amended) are duly complied with.
- They refer to case law, and to the Planning Regulations 2001(as amended) and Development Management Guidelines (2007) in this regard. This matter relating to ownership is a civil matter rather than within the remit of the planning system.
- They request the Board to dismiss the specific grounds of appeal relating to legal matters, as the applicant has full legal entitlement to apply for planning permission on lands which are owned by the group in which Vogue Homes is part of. They refer to a letter submitted on the status of Vogue Homes.

Design and Layout

- They consider the proposed density, design and layout to be appropriate for this location and to make an efficient use of this site. Also, that an appropriate residential and unit mix will be provided.
- Overall, there is adequate separation distances and a layout provided that will ensure amenity, privacy, and security for residents.
- They provide that adequate public and private amenity open space will be provided in accordance with standards.
- The proposal is to provide an optimum layout given the site constraints. Buildings are orientated to activate all access routes within the site and to address the site frontage. DMURS has also been incorporated into the road and pedestrian design layouts.
- There is no loss of privacy for the dwelling to the NW. They note that the existing dwelling is on a plateau and separation distances.
- There is no established building line at present. The proposal incorporates adequate set back to ensure privacy of residents and to achieve an active site frontage.

Private Rights

- They refer the Board to the accompanying letter prepared on behalf of the applicant which clarifies that the septic tank is unauthorised and the applicant does not have any wayleave or easement for this septic tank.
- Going forward they provide that it is an appropriate engineering and planning response with the septic tank within the full ownership of the applicant's lands to decommission same and to provide direct connection to the neighbouring property to the Irish Water foul sewer. They provide that this is an appropriate public health response.

National Monument

- They submit that the development as proposed is consistent with the designated zoning of the lands and will have no material impact on the setting of the recorded monument in visual or land use terms.
- They note a planning condition relative to archaeological monitoring maybe appropriate.

Traffic

- They have regard to the Traffic and Transport Assessment Guidelines (May 2014) and note that an assessment of the proposal is not necessary, as it is below the threshold for a TTA.
- They note that traffic generated by the proposal will not exceed 10% of the traffic flow on the adjoining road network. They consider that the proposal will have a negligible impact on the road network.
- They refer to the Road Safety Audits submitted and note that the Council's Road Design Section does not object to the proposal in principle. They ask the Board to dismiss the specific grounds of appeal as raised relating to traffic and related matters.

Noise/Disturbance

- Given the adequate separation distances, along with retention of the intervening hedgerow/vegetation no loss of residential amenity for the dwelling to the NW will occur.

- Traffic generation from the proposal will not cause adverse impact on the amenity of adjacent residents.
- The proposal is compatible with other residential on zoned land in the area.

Amenity Areas

- They refer the Board to cross sections to demonstrate how the proposal is to be developed relative to the neighbouring lands. (Appendix 7 refers).
- They provide details on private open space for the proposed dwellings and apartments, which they consider are acceptable standards.
- Having regard to the 'Guidelines for Landscape and Visual Impact Assessment' it is their considered opinion that a Visual Impact Assessment is not required.

Summary and Conclusion

- They provide a statement to demonstrate that the proposal is consistent with the national, regional and local planning policy framework. It will provide for an appropriate and efficient use of this brownfield site which is highly accessible and a high-quality residential scheme.
- They note the revisions to the proposal as described above and provide that the decommissioning of the septic tank and connection to the foul sewer on lands in their ownership, will ensure that no public health issues arise for future occupants or the neighbouring dwelling.
- In view of the documentation submitted they submit that the issues raised by the Third Party have been addressed. They include a number of Appendices in support of the application. They ask that the Board grant permission subject to conditions.

6.3. Planning Authority Response

They had regard to the Grounds of Appeal and their response includes the following:

Administrative issues

- This application was verified by the Planning Authority in accordance with the terms of the Planning and Development Regulations 2001 (as amended).
- Form 2 of Schedule 3 and the Company name and address and name of the Director provided on the form.

Design

- The design and layout of the proposed scheme, which is on a lower level, will not impact adversely on the existing house to the NW, which is set back a minimum of 40m and is well screened by boundary planting.
- The layout has been designed to permit access road, parking spaces and communal open space, between the proposed houses and the boundary with adjacent dwelling house.

Building Line

- The Planning Authority had regard to the principles stated in the Cavan Town & Environs DP (2014-2020) Section, 9.4.12 Apartments when assessing this application.
- They consider that given the locational context close to the town centre, the constraints of the site, other apartment development in the vicinity, that the scale and house types proposed are appropriate at this location.
- The issue of the building line was taken into account at F.I stage, when revised plans were submitted showing the apartment block at the front of the site. The P.A considered that mirroring the existing building line of adjacent apartments and the provision of higher density apartment provision at this location would not be desirable.

Apartments

- They provide that there is an oversupply of apartments in the town.
- They provide a list of criteria relative to where land is being considered for apartments which were taken into consideration.

Private Rights

- They have regard to the issue of the existing septic tank and percolation area and reserve percolation area, which lies towards the NW corner of the site. They note that the issue of right of way/wayleave was not indicated in the documentation submitted with the application and was not raised as an issue of concern in the initial submission.

National Monument

- They note the scale of the site and the distance from the National Monument and provide that given the Guidelines and the distance from the buffer zone around the monument c. 150m the application was not referred to the Department of Culture, Heritage and the Gaeltacht.

Traffic

- They are guided by the report from Road Design following the submission of a Stage 1& 2 Road Safety Audit – revised plans and F.I submission and their recommendation, that there is no objection in principle.
- It is recommended that the standard conditions for road construction and layout should apply to any grant of permission.

Noise Disturbance

- The issue raised regarding noise disturbance cannot be supported as the proposed use is compatible with the existing residential zoning and the adjacent use of the detached residential dwelling.

Amenity Area

- The P.A had regard to the constraints of the site in particular, the level differences and the requirement for excavation works and the provision of useable amenity space within the site. These issues were addressed were addressed in the revised plans in the F.I submission.
- The P.A had regard to the report by Alan Traynor Consulting Engineers Ltd in its recommendations for Foul, Surface Water, Attenuation Calculations & Details.

Conclusion

- In conclusion they submit, that having regard to their Planning Reports that the proposed development was deemed to be acceptable, subject to compliance with conditions. They ask the Board to uphold their decision.

6.4. **Further Responses**

Sheelin & McCabe Planning Services Ltd. have submitted their response to the First Party response. This includes the following:

- They provide that for the avoidance of doubt that they have not been retained by Declan & Ann Breslin in making their appeal submission/observation.
- The changes now proposed deprive the public such as Declan & Ann Breslin (on the adjoining site to the NW), their public right to actively participate in the planning process.
- There is no clear legal basis for amending an application at appeal stage and to allow such amendments would set an undesirable precedent.

Septic Tank and Associated Percolation Areas

- The septic tank and percolation area are not unauthorised as they were set up prior to the planning law coming into force in 1963.
- Declan and Ann Breslin subsequently purchased their dwelling in the early 1980's and the legal position with the septic tank and percolation area was established at that time.
- The right of way has been enjoyed since 1952. It has been maintained in the full knowledge of the current owners and previous owners and Declan Breslin intends to continue to do so. (Appendix 2 refers to the position).
- There has been no extinguishment or abandonment of this right of way in that time and the septic tank continues to be in full use. The said right of way is a property right and cannot be summarily disposed by the applicant without the consent of the Breslin's. No agreement exists or has been entered into between the developer and the Breslin's.

- They attach a legal statement by Wolfe & Co. Solicitors which in general terms set some clear facts on the subject matter of the Right-of-Way (Appendix 1).

Administrative issues

- The proposed site is in the ownership of Crosserlough Construction Ltd and they provide Folio details. They note that Vogue Homes is the registered business name and is not a legal entity.
- For clarity, local property holders have a legitimate expectation that the owners of the site would have applied for planning permission, instead a synonym has been lodged.
- It would appear there is no logical reason for not disclosing the correct information as to the applicant and ownership of the site, other than to create confusion and prevent individuals from exercising their right to make observations/submissions to this planning application.

Revisions proposed

- They contend that the Board cannot and should not consider amendments as proposed by the applicant. Such amendments are prejudicial to neighbouring land-owners and exclusionary to their right of way to participate in the planning process as it pertains to them and the proposed development.
- The developer does not have the right to arbitrarily decide to infringe on the legal rights of the Breslin's to achieve planning status for his development.
- The Breslin's should not be deprived of their property rights i.e. they intend to decommission their septic tank regardless of any legal position. Mr Breslin would have to give his consent for the provision of a foul sewer line from neighbouring land into Irish Water Network. This has not been done.
- There were no issues with the septic tank prior to works that were carried out on the site. If as stated by Traynor Environmental Ltd there is ponding or other problems, such problems may have been created during these works as the problems claimed were not in existence before the work was carried out.

Private Amenity Space for the apartments

- They contend that any amendments to the private amenity space for the apartments are prejudicial to local residents adjacent to the proposed development and removes them from lawful participation in the planning process. They are satisfied that the main body of their appeal report deals with the other matters raised.

7.0 Assessment

7.1. Context and Planning Policy Considerations

- 7.1.1. As per the Regional Spatial and Economic Strategy, Cavan is identified as a key town of strategic importance within the border region. The Settlement hierarchy in the Cavan County Development Plan 2014-2020 notes that Cavan is the county town (Tier 1) and with a population of over 12,000 is considered a large town in the strategy. The site is within the urban boundaries and is zoned “Residential – Phase 1” under Variation 1 of the Cavan Town & Environs Development Plan 2014-2020. Note is had to the zoning objective and the vision for this zoning in the Policy Section above. Therefore, the principle of a residential development is acceptable within this zoning, provided it would not impact adversely on the character and residential amenities of the area.
- 7.1.2. Regard must also be had to the locational context, taking into account, the design and layout of the proposed development while having regard to the constraints of the site. This is narrow site, that is steeply sloping at the rear and there are a number of trees on the site, including along the road frontage. It is an infill brownfield site, with a detached two storey house on an elevated plateau to the north west and two sizable 4 storey apartment blocks on different levels to the south east of the site. Access to the site is from Farnham Road (R198) which while within the urban speed limits is a busy road.
- 7.1.3. The National Planning Framework Project Ireland 2040 includes reference to achieving effective density and consolidation rather than more urban sprawl as a top priority. National Policy Objective 18a seeks to: *Support the proportionate growth of and appropriately designed development in rural towns that will contribute to their*

regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services. It also provides that: It is necessary to tailor the scale, design and layout of housing in rural towns to ensure that a suburban or high density urban approach is not applied to a rural setting and that development responds to the character, scale and density of the town. However, it notes the issue of historically low-density housing development in rural towns and in general seeks to increase well designed residential density to increase efficiency and sustainability.

- 7.1.4. Note is also had to Section 28 - *The Urban Development and Building Heights Guidelines 2018* relative to the provision of increased heights and densities in urban areas. Regard is had to site suitability issues and to current national and local policies and objectives which generally support the promotion of higher densities in a qualitative design and layout that integrates with the proper planning and sustainable development of the area. In addition, to the Section 28 - *Sustainable Urban Housing Design Standards for New Apartments Guidelines 2018* and to the *Design Manual for Urban Roads and Streets (DMURS)*.
- 7.1.5. Since the proposed development seeks to provide infill residential development on residentially zoned lands, it is acceptable in principle. It is necessary that the proposed development would integrate well into the site and provide for the sensitive and efficient redevelopment of a brownfield and underutilised infill site by creating a compact and consolidated form of sustainable urban development, that is supported by planning policy, objectives and guidelines. The First Party provides that the proposed development and accompanying documentation have been prepared in response to the existing site context. The layout and design particulars incorporated into the attached appeal are considered to provide for a high-quality residential scheme.
- 7.1.6. However, the issue is and as has been raised by the Third Party, as to whether it would lead to an appropriate form of integrated sustainable development having regard to the locational context and the constraints of this upland infill site. Whether it would impact adversely on the residential amenities of the area, including the single detached dwelling to the NW and the apartment development 'Farnham Court' to the SE. In addition, whether it would detract from the pattern of the streetscape including the building line in this area of Farnham Road. Regard is also had to the planning

issues raised including relative to density, design and layout, access and parking, drainage etc.

- 7.1.7. This application is being considered 'de novo' and regard is had to the documentation submitted with the application and as further information, the issues raised in the Third Party Appeal, the Planning Authority response and the revisions made in the First Party submission and these are considered further in this Assessment below.

7.2. Administrative issues

- 7.2.1. The Third Party raises concerns about the legitimate ownership of the site. They provide that the name of the owners of the site as given in the documentation submitted is incorrect. That the proposed site is in the ownership of Crosserlough Construction Ltd and provide details of the Folio number. They contend that Vogue Homes which is registered business name is not a legal entity and provide details relative to such. They are concerned that a synonym name has been used, which is not an entity which people living locally would identify with.
- 7.2.2. The First Party response provides that in the context of the legal standing, Vogue Homes is part of the group which owns the subject lands, they submit that there is no basis for the ground of appeal by the appellant under 'administrative issues'. They also refer the Board to a letter in Appendix 5 of their submission in this regard. This notes that 'Vogue Homes' is the business name owner, registered and used by McGaughran Construction Ltd. They are part of the Vogue Group Holdings Group of companies which also includes Crosserlough Construction Ltd. They provide that Vogue Homes Group 100% own the site.
- 7.2.3. They provide that specifically the requirements of Article 22(2)(g) of the Planning and Development Regulations 2001 (as amended) have been complied with:
- 22(2) A planning application shall be accompanied by..*
- (g) where the applicant is not the legal owner of the land or structure concerned, the written consent of the owner to make the application.*
- 7.2.4. The Third Party query this response and provide that the facts remain that Vogue Homes is not a legal entity. They contend that this has been a deliberate attempt to

mislead or conceal the identity of the applicant and the proposed site. That it has led to confusion and prevents individuals from exercising their right to make observations/submissions on this planning application.

- 7.2.5. The Planning Authority response provides that the application was validated in terms of the Planning and Development Regulations (S.I 600.2001 -2019, as amended). That Form 2 of Schedule 3 and the Company Name and Address and name of the Director was provided on the form.
- 7.2.6. Having regard to the issues raised regarding the validity of the application, this is within the remit of the Council and while the documentation submitted is noted, it is not considered appropriate or within the remit of the Board to further comment on these matters. The issue of ownership is discussed further in the Section relative to Right of Way below.

7.3. **Design and Layout**

- 7.3.1. A Design Statement was submitted with the original application. It is noted that the site is constrained with the rear being very steep and elevated and that the site to which the application relates has undergone significant ground works in the past. It is proposed to provide 12no. residential units, these are to comprise as shown on the plans then submitted, a terrace of 8no. 2 storey town houses (4no. 3 bed and 4no. 2bed) to the front of the site, with a 3 storey apartment block coming of 3 no. apartments (1no. one bedroom unit per floor) and 1no.3bed semi-detached house. The apartment block was originally shown to the rear of the proposed residential development.
- 7.3.2. Revised plans were submitted in response to the Council's Further Information request. The proposed Site Layout has been altered so that the 3 storey apartment block is now shown at the site frontage facing the road. The apartment floor areas have been increased so that they now comprise 3no. 2 bedroom, 3person apartments and the floor area is increased to between 75 and 77sq.m per apartment. The balcony areas are also shown increased to 5sq.m. The terrace of 9no. 2 and 3 bedroom houses are shown located to the rear of this block. The linear configuration and orientation of the houses, while shown further set back within the site is similar.

- 7.3.3. Parking is proposed to the front of the row of houses along the internal access road and private open space is provided for the houses in the rear garden areas. The rear gardens are to be a minimum of 42sq.m which they provide is an acceptable standard for such terrace type dwellings.
- 7.3.4. Regard is had to Appendix 1 of the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2020*, which provides the minimum floor areas and standards for apartments. These are shown as two bedroom, 3 person apartments, and the floor areas are c.75-77sq.m. which exceeds the standards. While in general the apartments are in accordance with the standards, the storage areas are 4.5sq.m which is less than the minimum standard of 5/6m.
- 7.3.5. Private open spaces for the two-bedroom 3 person apartments is to be provided by balconies facing the road. It is noted that as shown on the plans submitted at F.I stage is given as 5sq.m which is less than that recommended in Appendix 1 of the Design Standards for Apartments 2020. The revisions that are included as part of the First Party response to the appeal show this area increased so that the first and second floor apartments are shown to have balconies of c.7sq.m which is in accordance with the standards.
- 7.3.6. The First Party provide that the site has been configured to utilise the portion of the lands which are most suitable for development, closest to the roadside. However, having regard to the proposed design and layout, I would be concerned that the apartment block would be significantly further forward of the building line. In addition, for the amenity of future occupants of the apartments in that the proposed block will be sited very close to the public road, the R198, which is a fast and busy road. Also, I would have concerns about the lack of communal open space for the apartments and the distribution of public open space within the scheme.
- 7.3.7. I would also be concerned that the layout of the proposed development will appear crammed in a linear form into the south eastern part of the site while the density is lower than previously approved by the Board in Ref. PL02.208549 refers. This is discussed further relative to the impact on the character and amenities of the area in this Assessment below.

7.4. Landscaping and Public Open Space

- 7.4.1. On my site visit I noted that there are mature trees along the road frontage and along the north western site boundary. The latter provide screening for the detached dwelling to the NW. This is set back on an elevated plateau and is above the level of that part of the site proposed for development. There are also trees and shrubs within the greater site area and on the steep slope at the rear. There is concern relative to excavation and landslide. It is noted that there is a difference of approx.16m between ground levels at the site frontage and those at the rear boundary of the site. It is provided that the site has been configured to utilise the portion of the lands which are most suitable for development closest to the roadside.
- 7.4.2. The F.I response includes a section through the site, indicating the extent of the dig to the rear and the height of the retaining wall. The First Party response to the appeal has included site cross sections to demonstrate how site works are to be provided and submit that this will provide a quality residential environment. It is noted that the site works are to include a retaining wall and associated railing designed to engineered standards, with associated railing and handrail to ensure public safety at all times. They provide that the retaining wall will be designed to relevant engineering and building control standards to ensure structural integrity, in line with requirements for all building works to meet the required standards.
- 7.4.3. I note that a Tree Survey or Arboricultural Report has not been submitted with this application. The current proposal does not show which trees are to be retained within the overall scheme. The screening along the road frontage and the south eastern boundary with 'Farnham Court' will have to be removed to facilitate this development. It is noted that Policy WTHS-P1 of the Cavan Town Plan and Environs 2014-2020 seeks: *To encourage the retention of mature trees and the use of tree surgery rather than felling where possible when undertaking, approving or authorising development.* I would not consider that it has been demonstrated that this policy will be complied with.
- 7.4.4. While the First Party provides that residents will continue to use the existing green spaces within and associated with the overall site, I do not consider it acceptable that the proposed layout does not include any communal open space dedicated for the

apartments. This is not in accordance with the said Apartment Guidelines where Appendix A provide minimum areas for such.

- 7.4.5. In addition, Section 9.1.7 of the Cavan Town and Environs DP 2014-2020 refers to public open space and provides that greenfield sites should provide a minimum of 15% of the total site area as usable public open space. It also provides that large infill sites or brown field sites should provide a minimum of 10% of total site area as public open space. In view of the configuration of the site, it is noted that the embankment at the rear is too steep to be considered as usable public open space. While the First Party response provides that the layout of open space achieves 26% of the net/developable site area, I am not convinced about the usability of this open space, spread in small areas throughout the site and on the steep slope to the rear of the row of houses. I would also, have concerns about the design and distribution of public open space within the scheme.

7.5. Impact on the Character and Amenities of the Area

- 7.5.1. I would have some concerns about the design and layout, particularly, the proposed 3 storey apartment block which is sited close to the road frontage of the site, just over 6m from the public road. While the detached house to the NW is further set back on site, I would be concerned that it will be considerably further forward of the building line provided by the apartment block to the SE 'Farmham Court'. It is noted that on the revised plans the first town house on plot no.4 roughly corresponds to this building line. I would consider that in view of its forward positioning on site, this apartment block will appear overly dominant in the streetscape. If as shown on the original layout the apartment block were to be set to the rear, then the row of town houses would be forward of the building line and the side elevation of that block would face the road, which would also not be desirable in the streetscape.
- 7.5.2. While I would consider that the design of the proposed development has some merit as a stand-alone development, visually it would detract from the pattern of development in this area and would not be the most appropriate development for this site. In view of these issues, I would consider that the proposed development would not be in accordance with current standards and guidelines, and I would be concerned that it would detract from the character and amenities of the area.

However, if the Board decide to permit, I would recommend that it be conditioned that the apartment block be omitted, which would then reduce the density of the overall scheme, but would retain the building line.

7.5.3. I note that having regard to the planning permission Reg.Ref.03/1508 refers, permission was granted subject to conditions for the erection of 21no. apartments in as per the revised plans a 1no. 4 storey block. This was subsequently granted on appeal by the Board – Ref. PL02.208549 refers. I would consider that this site, despite the constraints, has scope for a residential development and for a higher density development than the 12no. units currently envisaged. While I note the concerns that there is an oversupply of apartments in the town, I would consider that in view of the site configuration, an alternative design with mix of unit types including apartments and duplexes, perhaps more similar to that previously permitted, in a single more centrally located 3 to 4 storey block may be preferable. This would also allow for a greater set back more in line with the apartment block to the SE and more public/communal open space and for a greater retention of trees along the site boundaries. In view of all these issues, the Board may consider that a more appropriate alternative form of development taking into account, the constraints of this site, would be better addressed in a revised design and layout in a new application.

7.6. Access and Parking

7.6.1. There is an existing field gate into the site, and it is proposed to provide a vehicular entrance and access road from Farnham Road (R198) into the north western part of the site. It is noted that the access to the detached house is further to the north. There is a gated entrance into the apartments ‘Farnham Court’ to the south, which has a footpath along the frontage. The access to Drumnavanagh residential estate is on the opposite side of the road. The site is located within the 50kph urban speed limit of Cavan town, approximately 150m southeast of Rock’s Cross junction. Sightlines at the proposed entrance are currently restricted due to roadside trees and hedgerow along the site frontage. There is concern that the proposed development is premature in that it would give rise to additional vehicular, pedestrian and bicycle traffic on a road network which is substandard and deficient in the provisions of footpaths, cycle paths, pedestrian crossings and public lighting.

- 7.6.2. The Council's Road Design Section recommended the F.I be sought to include a raised junction at the main entry to the development, complete with tactile paving to comply with DMURS, car parking standards to be a minimum of 2.7m in width and junction radii not to exceed 6m to control entry/exit speed. It is noted that there is currently no footpath along the site frontage and they recommended that a 2m wide footpath be provided over the full R198 road frontage of the development. Also, that a Stage 1 & 2 Road Safety Audit of the development and its junction with the public road be carried out by an independent qualified engineer and be submitted for consideration of the Council.
- 7.6.3. The F.I response includes revised plans to show the raised junction together with tactile paving. They provide that car parking spaces are revised to 2.6m as agreed with Road Design. That the junction radii is revised to 6m radius. It is provided that a 2m footpath is proposed along the entire site frontage. They also include a Stage 1 & Stage 2 Road Safety Audit. This notes that vehicular, pedestrian and cyclist access to the proposed development is to be via a new direct access onto Farnham Road (R198). The Farnham Road is a single carriageway road with a footpath on the opposite side of the road to the proposed development and is within the 50kph speed limit.
- 7.6.4. The recommendations of the RSA Stage 1& 2, include that the corner radii be reduced in line with DMURS and that the main access width be no greater than 6m. and that a stop sign be located at the entrance. They also recommend the provision of pedestrian crossings, dropped kerbs and suitable tactile paving be provided. They included recommendations about the parking layout and provision of footpaths to ensure pedestrian and cyclist safety within the proposed internal layout. They recommended that it is important that road lighting is provided within the development, especially in close proximity to the bike storage area. It is noted that there are no cycle lanes along this section of the R198.
- 7.6.5. The First Party submission notes that the proposal incorporates 2 spaces per dwelling and 1 space per apartment, and that the requirements of table 4.1 of the Cavan TDP are duly met. They provide that visitor spaces for the apartments are adequately provided for with 1no. space.

7.6.6. The Council's Road Design Section, had regard to the F.I submitted and provide that they have no objection to the proposed development subject to recommended conditions. If the Board decide to permit it is recommended that appropriate conditions, relative to the access, internal road layout, provision of footpath along the road frontage, parking and cycle facilities onsite be included.

7.7. Drainage issues

7.7.1. Details submitted with the application provide that the main site services in the form of the foul and surface water sewer have been installed and connected. A foul and surface water layout by Alan Traynor Consulting Engineers has been attached. They are proposing a new storm water attenuation to cater for the application. They provide that a pre-consultation has been submitted to Irish Water.

7.7.2. It is provided, that there is no history of flooding with this site. A water attenuation tank is proposed as shown on the drawings. They refer to a flood study carried out by the OPW and RPS and provide that there are no issues with flooding on this site.

7.7.3. Irish Water noted that they do not have water/wastewater infrastructure within the public road fronting the proposed development. They provide that a mains/sewer extension will be required to cater for the proposed development. They note that at this time a mains/sewer extension is not on the current Irish Water Capital Investment Plan.

7.7.4. The F.I response includes a pre-connection enquiry response from Irish Water. This includes that subject to a valid connection agreement being put in place that their proposed connection to Irish Water can be facilitated. Also, that a design proposal for the water and or wastewater infrastructure should be submitted to Irish Water for assessment. If the Board decides to permit, I would recommend that appropriate drainage conditions be included.

7.8. Right of Way issue

7.8.1. The Third Party is concerned that the proposed development will interfere with their septic tank and percolation area which are located within the north western corner of the site. The location of this is adjacent to the proposed entrance and has been shown on the Site Layout Plan submitted on the revised plans and in response to the

Appeal. They provide that they have historic benefit of wayleave/easement to this location (they include an Affidavit) and have not given their consent for the proposed works and for the decommissioning of this septic tank and percolation area which serves their dwelling to the NW.

- 7.8.2. The First Party response provides that as there is no legal status for this septic tank and no planning consent pertaining for it to exist, that the applicant is fully entitled to remove this septic tank at any time from their lands, without third party consent being required. However, as a practical solution they propose that the unauthorised septic tank be decommissioned in an appropriate environmentally friendly manner. To fully accommodate the neighbouring dwelling and effluent requirements they propose to provide a direct foul line to the neighbouring property and connection to the Irish Water foul sewer as part of the overall site development works. They provide that this will ensure that no public health issues will arise and ensure a holistic approach to the proposed development.
- 7.8.3. The Third Party response provides that there is no agreement to extinguish this right to use the said septic tank and percolation area, in order for the applicants to achieve status for their proposed development. They contend that the revisions now proposed are different to that applied for and were not indicated to the Council in the planning process. It is noted that this issue was not included in the description of development. In addition, that if permission is granted by the Board that they are giving *certain licence* to the applicant to deprive them of their property rights. They also provide that there were no issues with the septic tank prior to some works being carried out on the subject site.
- 7.8.4. However, the issue of right of way/easement is a civil matter, and the applicant is advised that in the event of encroachment or any dispute regarding right of way/easements concerning the adjoining property, the consent of the adjoining property owner is required. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*The planning system is not designed as a mechanism for resolving*

disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts..." In other words, the developer must be certain under civil law that he/she has all the rights in the land to execute the grant of permission.

7.9. Archaeology

- 7.9.1. Details submitted with the application provide that an archaeological assessment is not required for this site as the entire existing topography has been disrupted from previous site works. The Planner's Report provides that there are no archaeological features identified within the site. The nearest site is the recorded monument: CV00809 described as a 'Ringfort/Rath' and shown on the O.S Mapping as 'Swellan Fort'. This is shown c. 150m uphill from the subject site. The First Party response provides that as determined by the Planning Authority no issues arise as the proposal is adequately separated from the monument.
- 7.9.2. However, it is noted that there are Third Party concerns about impact on archaeology. An Archaeological Assessment has not been submitted, and in view of the terrain, and steeply sloping nature of the site, I would recommend that if the Board decides to permit that a condition relative to archaeological monitoring be included.

7.10. Construction Management

- 7.10.1. The Council's Waste Management Section recommended that a comprehensive and detailed Construction Waste Management Plan be prepared and submitted to the Council for approval, to be done in accordance with current standards and guidelines. In response to the Council's F.I request, a Construction and Waste Management Plan by Crosserlough Construction was submitted. It is recommended that if the Board decide to permit that it be conditioned that a detailed Construction and Waste Management Plan be submitted, which also includes details relative to excavation issues, including the provision of retaining walls on this steeply sloping site, construction traffic, hours of operation etc.

7.11. Screening for Appropriate Assessment

7.11.1. The appeal site is to be connected to public services, is within the residential zoning, and is not within or in close proximity to any Natura 2000 sites. The nearest such sites are at a considerable distance, and there are no watercourses within or proximate to the site. Subject to standard good practice construction methods and having regard to nature and scale of the proposed development, the nature of the receiving environment and the distance to the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

1. Having regard to the overall design, scale, layout and low density of the proposed development, the disposition of the buildings on the site, in particular the location of the proposed apartment block significantly further forward of the building line and adjacent to the road frontage and the lack of communal open space for the apartments, the poor distribution of public open space throughout the site, the lack of landscaping details including the preservation of mature trees, it is considered, that the proposed development would provide for a poor living environment for future residents and be visually obtrusive in the streetscape. That it would not comply with the criteria for design and layout in Residential Development in Section 9.1 and Policy WTHS-P1 of the Cavan Town & Environs Development Plan 2014-2020 as varied, the Urban Design Manual A best practice guide issued by the Department of the Environment, Heritage and Local Government in May 2009 or Section 6.11(b) of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas issued by the Department of the Environment, Heritage and Local Government in May 2009, relative to density

for edge of centre sites, or with the Sustainable Urban Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December, 2020. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

24th of May 2021