



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309463-21

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<b>Development</b>	Demolish bungalow and construction of 8 dwelling units.
<b>Location</b>	Townparks , Ballyhaise , Co Cavan
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	19459
<b>Applicant</b>	Noel Tierney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Aidan Rehill
<b>Date of Site Inspection</b>	29 June 2021
<b>Inspector</b>	Dolores McCague

## 1.0 Site Location and Description

- 1.1. The site is located at Townparks, Ballyhaise, Co Cavan.
- 1.2. The site is located within the village at the junction of two roads, the R212 regional road to the front (east), and the local road, L20021-0 to the side (south). There is a modern bungalow on the site (pl reg ref 030188) set well back from both roads and accessed from the regional road.
- 1.3. To the west is a builder's supplies yard. To the north, a detached two storey dwelling at a similar set back from the road as the bungalow, with windows facing the subject site. On the opposite side of the local road is the side boundary of the primary school. On the opposite side of the regional road, framing either side of a road junction, terraced developments of relatively recent origin are set at the footpath edge, with a mixture of commercial and residential uses.
- 1.4. The entrance to the site is currently from the regional road. The front boundary comprises rendered block walls with a wrought iron fence above; other boundaries are formed by trimmed hedges. That to the local road is a thick Lelandii hedge. There is a slight rise in ground levels within the site from east to west, of no more than 0.5m.
  - 1.4.1. The site is given as 0.21ha.

## 2.0 Proposed Development

- 2.1.1. It is proposed to demolish the existing bungalow & erect a two storey terrace comprising 8 no. dwelling units to consist of 4 no. two-storey 2-bedroom townhouses, 2 no. two-storey 3-bedroom townhouses & 2 no. 1 bedroom apartments (a ground floor apartment and a first floor apartment above) together with carparking, footpath, connection to existing public mains and all associated works.
- 2.1.2. The proposed building is cranked to sit on the corner of the two roads.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 20 conditions, including:
- 2 €40,000 development contribution.
  - 3 €2,000 bond per dwelling.
  - 4 prior to commencement, works to the R212 and the realigned L20021-0, as far as and including the proposed entrance shall be completed.
  - 5 prior to commencement, engineering drawings of the proposed layout and design of the footpaths, roadway and junction layout to be submitted for agreement.
  - 6 prior to commencement, detailed engineering drawings for the proposed surface water drainage system to be submitted for agreement.
  - 7 prior to commencement brick colour and product, and position of downpipes on all elevations to be submitted for agreement.
  - 8 front boundary walls and rear garden walls shall be of brick to match the remainder of the development.
  - 9 prior to commencement, a landscape plan, to required details, to be submitted for agreement.
  - 10 the developer or a management company shall be responsible for upkeep of the development.
  - 11 public lighting to be in accordance with Cavan Co Co External Lighting Policy.
  - 13 all works to entrance, frontage, surface water drainage, landscaping, public lighting, road layout and surfacing to be completed prior to first residency.
  - 14 revised details of bicycle parking, to include a designed shelter, to be submitted for agreement.
  - 20 re. Irish Water Infrastructure capacity requirements and proposed connections to the Water and Wastewater Infrastructure ...
- 3.1.2. The decision was in accordance with the planning recommendation.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

There are two planning reports on the file. The first recommending a further information request includes.

- Development Plan
  - Tier 4 town.
  - Zoned white land.
  - Applications for new developments will be required to demonstrate that sufficient capacity exists within existing Waste Water Infrastructure to cater for the proposal. Should it be the case that capacity does not exist or the proposed development would result in existing capacity being exceeded, the proposed development shall not be permitted.
  - Protect and enhance the special character of the towns and villages by promoting the sustainable use of development land within development boundaries, at density levels that are appropriate to the towns character.
  - All new proposals for residential developments shall demonstrate, at planning application stage, that they are in strict compliance with the DECLG documents 'Sustainable Residential Development in Urban Areas (cities, towns & villages), 2009' and the accompanying document 'Urban Design Manual; A Best Practice Guide', 2009.' Developments that fail to comply with these documents shall not be permitted.
  - Ensure the orderly development of towns and villages by taking a sequential approach to the development of lands within towns and villages.
  - Proposed developments shall be consistent with the Settlement Framework and all other sections of this plan, including population targets. Developments which are considered to be inconsistent with the Settlement Framework or the policies and objectives of this plan shall not be permitted.
  - Consideration may be given to the development of dwellings which do not strictly adhere to the sequential approach, if such dwellings can be considered to be a viable alternative to rural dwellings. Such development must consist of

a mix of detached family homes with 3, 4 and 5+ bedrooms, on larger than average sites (circa .1 hectare) with a variety of house designs, a high level of demonstrable privacy and the capacity for adaptation and extension. Public open space and other considerations shall be provided in compliance with 'Sustainable Residential Development in Urban Areas (Cities, Towns & Villages)' Guidelines for Planning Authorities (May 2009) and the accompanying 'Urban Design Manual, A Best Practice Guide'.

- The site has a corner location that has potential to reinforce the street pattern and balance both sites of the R212 on the approach to the town. A reduction of building footprint, would reduce the effectiveness of the urban design contribution.
- The compact size of the site limits the overall number of units achievable and localises the density to this corner location only.
- The scheme is predominantly small-sized residential units designed functionally to an efficient floor plan. The intensity of development is comparatively small – site coverage is 18% per application red line which includes the public road.
- The adjoining house with upper windows (possibly bedroom) and lower windows (possibly living areas) on the gable facing the application site. There is an established boundary with mature evergreen trees all within the control of the third party. The site layout sufficiently protects the residential amenity in terms of privacy and sunlight in the context of this urban environment.
- Planning history cited.
- Pre-planning consultation.
- Observations cited.
- Re. adjoining dwelling, there is an established boundary with mature evergreen trees within the control of the third party. The distance of the building from the side boundary is 6.8m, the distance to the back wall of the nearest proposed dwelling would be 8m, at a setback and at right angles. This sufficiently protects the existing residential amenity in terms of privacy and sunlight in the context of this urban environment. The nearest first floor window would be approx. 29.5m away at an angle of 40°. There would be no direct opposing windows.

- The proposed development weets the requirements of the planning guidelines for new apartments and the appended requirements for minimum floor areas, widths, storage space, private open space, etc. These were highlighted at pre-application stage. Each of the 8 units will have dual aspect.
- The need for car parking must be balanced against the achievement of a high quality of urban design, a liveable environment with high quality open space and layout, providing an appropriate housing mix that meets housing need (which includes smaller sized residential units) and encouraging sustainable patterns of transport and modal shift.
- The proposed development is an opportunity to enhance the design of this road junction against the R212 and provide the necessary footpaths in proximity to a primary school.
- Further information recommended on 13 points, which issued.

#### 3.2.2. Other Technical Reports

#### 3.2.3. Municipal Engineer – further information.

- Road / footpath,
- Surface water,
- Landscaping,
- Cross section drawing.

### 3.3. **Prescribed Bodies**

- 3.3.1. IW – further information - please note that where IW does not have water / wastewater infrastructure within the public road fronting the proposed development a mains/sewer extension will be required to cater for the proposed development. At this time a mains/sewer extension is not on the current Irish Water Capital Investment Plan

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

- 3.4.1. One observation was received (current appellant) expressing concerns re:

Density – overdevelopment, not appropriate to the area.

Privacy & shadowing – overlooking of main living / dining room window. Reduction in light.

Sewage and surface water problems will be exacerbated.

Design – not in keeping with architecture of the village.

Parking deficit. Area in front of Gala shop is indicated as parking, it is customer parking only. Public parking is totally inadequate and results in illegal parking.

Traffic – there have been accidents and fatalities in the area including demolition of school wall and boundary wall of the site. The local road serves the builder's providers and a large number of private houses.

### **3.5. Further Information**

3.5.1. A further information request on 13 points issued 23<sup>rd</sup> January 2020:

1 - layout revision – reduce private open space in favour of a quality and useable strip of public open space acting as a buffer between the residential units and rear car park, passively overlooked and situated to provide maximum amenity.

Reconfigure or fragment the layout of the proposed car parking spaces to reduce the dominant appearance of car parking. Examine the potential of increasing the number of spaces.

2 - cross sections through development and boundaries illustrating height difference and boundary treatments.

3 - boundary treatments along north west to protect amenities of adjoining property.

4 - planting scheme along junction.

5 - dimensioned drawing, with cross sections at various locations including the narrowest point, along local road L20021 illustrating a minimum 6m wide road carriageway and sufficient width to accommodate a potential future 1.8m wide footpath along the boundary of the national school.

6 - rear garden boundary treatments, solid block wall with rear access doorways allowing access to the car parking.

7 - c1m privacy area to front with decorative railings.

8 - proposals to visually break up the side elevations to units 1 and 8 to minimise the impact of the blank elevations.

9 - consider an element of brick for the rear elevation.

10 - details of location and colour of downpipes.

11 - bin and bike stores adequate for 8 units.

12 - CCTV of existing surface water drainage system, a detailed report with dimensioned plan drawings illustrating pipe type and diameter, direction of flow, invert level manhole locations and point of discharge. Based on capacity of the existing system, submit a design of a surface water drainage system; location of road gullies and manholes. Rainwater downpipes are to discharge via a piped system directly to the back inlet of a back inlet gully.

13 - to assess the feasibility of connecting to public water / wastewater submit pre-connection enquiry to Irish Water. IW does not have water / wastewater infrastructure within the public road fronting the proposed development a mains/sewer extension is not on the current Irish Water Capital Investment plan.

### **3.6. Further Information Response**

3.6.1. A further information response was received 25<sup>th</sup> October 2020, including:

- Revised drawings.
- CCTV survey.
- IW response to pre connection enquiry: proposed connection can be facilitated subject to:
  - Detailed proposed sewer layout.
  - Detailed proposed watermain layout.
  - Note separation distances to all existing services must be maintained. An existing sewer traverses the site. Should this require diversion you must submit a diversion application.
- Letter of consent from St Felim's Diocesan Trust.



### 3.7. Further Reports

3.7.1. Planning report recommending clarification of further information (which issued 29<sup>th</sup> October 2020) on 4 points, includes:

Generally satisfied with responses.

Points for clarification:

- Works are proposed beyond the site boundaries to facilitate junction realignment and public footpath construction, written consent from landowner required.
- Drainage details downpipe drainage and consent for discharge outside the site.
- Northwest boundary treatment.
- Public lighting system.

3.7.2. MD Engineer report as quoted in the planning report includes:

Recommending permission subject to conditions.

3.7.3. Clarification of further information was received on the 17<sup>th</sup> December 2020.

3.7.4. A further planning report (22<sup>nd</sup> January 2021) recommending permission subject to 20 conditions, includes:

Satisfied with responses, subject to some reservations regarding the lighting product type, per advice from the MD (District) Engineer, which should be conditioned to be agreed with the Public Lighting Section.

## 4.0 Planning History

03/1088 demolish garage and erect extension, permitted not developed.

Pre-planning 9/5/2019 – alternative layouts discussed.

## 5.0 Policy Context

### 5.1. National Planning Framework

5.1.1. A planning framework to guide development and investment over the coming years, which includes:

National Policy Objective 3a Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.

National Policy Objective 4 Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

National Policy Objective 11 In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.

National Policy Objective 13 In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

## **5.2. Regional Spatial and Economic Strategy (RSES), Northern & Western Regional Assembly, 2020-2032**

- 5.2.1. This provides a high-level development framework for the Northern and Western Region that supports the implementation of the National Planning Framework and the relevant economic policies and objectives of government in a 12 year strategy. Relevant provisions include:

RPO 3.3 Deliver at least 20% of all new housing in rural areas on brownfield sites.

## **5.3. Development Plan**

- 5.3.1. The Cavan County Development Plan 2014-2020 extended, is the operative plan. Relevant provisions include:

The site is within Ballyhaise a small town (tier 4), zoned whitelands: for mixed use development outside town or village cores; to cater for the continued growth and development of small towns and villages.

Development Management Policies - General

Overshadowing - A development of a significant height may require daylight and shadow projection diagrams in accordance with 'Site Layout Planning for daylight and Sunlight: A Guide to Good Practice' (BRE 1991) or 'B.S. 8206 Lighting for Buildings Part 2 1992: Code of Practice for Day lighting.' P237

Access for All - Applications for new dwellings either for an individual dwelling or a housing estate type development should consider the concept of life time adaptable housing. The layout and design of residential developments and open spaces should give consideration to the needs of everyone including the aged, people with disabilities and people with children. Density- With regard to the density of residential developments, applications for residential development will generally be required to demonstrate compliance with the DECLG 'The Sustainable Residential Development in Urban Areas,' 2009. However, whether or not a particular density is appropriate in any given case will, in practice, depend on local conditions and on the design and layout of the scheme rather than on some predetermined scale of densities for the area.

Apartments - It is not anticipated that there will be any great demand for new apartments within the lifetime of this plan. Where apartments are proposed a strong justification and an identifiable need will have to be proven. All applications for new apartments shall provide clear details of the justification and need for them including but not limited to the number of apartments currently constructed and the numbers vacant in the area. Any development of apartments shall be in compliance with 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities', 2007.

It is a policy of Cavan County Council to ensure that adequate car parking spaces are provided in all new developments, to cater for the immediate and anticipated demands of developments. Implement parking levies to relevant towns, in line with the approved county 'Development Contribution Scheme.'

White Lands - Objective: This zone is for mixed use development outside of Town or Village Cores. This zone is to cater for the continued growth and development of Small Towns and Villages whilst recognising their main function which is to support and provide services for the local population. It is envisaged that their population and level of development will remain stable and the function of white lands will be to allow for limited growth, should it happen, and to provide for the development of

additional services such as employment, educational, leisure etc. Residential development shall be of high quality, low density and accompanied by sufficient detail to justify its requirement. Applications for residential development on white lands shall be assessed in the context of the overall population allocation in the core strategy and shall not be permitted where this allocation is significantly exceeded. Individual applications which would exceed the existing population by more than 10% shall not be permitted.

#### Objectives

New residential developments in Tier 4, 5 and 6 Towns/Villages shall not be permitted until such time as existing unfinished sites, live planning permissions and partially developed sites have been completed.

If all existing unfinished sites, live planning permissions and partially developed sites have been completed, applications for new developments maybe permitted if they can demonstrate a clear housing need by submitting the following;

- Demonstrate how a sequential approach has been taken in selecting a site for residential development with a presumption that town core or edge of town core sites must be developed first.
- Details of why the proposed developed is required and the demographic for whom it is planned.

Individual applications which would exceed the existing population by more than 10% shall not be permitted.

Residential developments of more than fifteen dwellings shall not be permitted within Small Towns.

The development of new apartment buildings shall not be permitted in Small Towns, Villages or Small Villages.

Parking - It is the policy of the Council to require development proposals to provide adequate provision for car parking and associated servicing arrangements. The precise volume of car parking will be determined according to the specific characteristics of the development and its location, having regard to the standards set out in table 4.7.

Table 4.7: Parking Standards

2 spaces per unit residential, 1 space per unit and 10% visitor parking - residential – apartments.

In exceptional circumstances, the Council may at their discretion accept a reduced parking requirement, where the applicant has clearly demonstrated that this would not impact on road safety or traffic flow, and where it is considered to be in the interests of the proper planning and sustainable development of the area.

White Lands - Objective: This zone is for mixed use development outside of Town or Village Cores. This zone is to cater for the continued growth and development of Small Towns and Villages whilst recognising their main function which is to support and provide services for the local population. It is envisaged that their population and level of development will remain stable and the function of white lands will be to allow for limited growth, should it happen, and to provide for the development of additional services such as employment, educational, leisure etc. Residential development shall be of high quality, low density and accompanied by sufficient detail to justify its requirement. Applications for residential development on white lands shall be assessed in the context of the overall population allocation in the core strategy and shall not be permitted where this allocation is significantly exceeded. Individual applications which would exceed the existing population by more than 10% shall not be permitted.

Residential is permitted in principle.

#### Objectives

New residential developments in Tier 4, 5 and 6 Towns/Villages shall not be permitted until such time as existing unfinished sites, live planning permissions and partially developed sites have been completed.

The development of new apartment buildings shall not be permitted in Small Towns, Villages or Small Villages.

#### 5.4. **Cavan County Council Development Contribution Scheme**

Dwellings - €5000 per unit.

**5.5. Sustainable Residential Developments in Urban Areas-Guidelines for Planning Authorities (May 09)**

Of relevance - Access for all 7.11 Circulation within housing layouts, including access to individual buildings, should have regard to the varying needs of occupants over their lifetimes, including needs associated with mobility difficulties and the normal frailty associated with old age. Innovative dwelling design should be encouraged in order to facilitate the potential future provision of adaptable and accessible accommodation.

**5.6. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2018**

Of relevance - Minimum width of living/dining room - one bedroom 3.3 m. Minimum floor areas for private amenity space - one bedroom 5 sq m.

Part M of the Building Regulations sets out standards to ensure that buildings are accessible and usable by everyone, including children, people with disabilities and older people.

**5.7. Natural Heritage Designations**

- 5.7.1. The nearest Natura site is Lough Oughter and associated Loughs SAC (site code 000007) located c 0.8km from the subject site.

**5.8. EIA Screening**

- 5.8.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A third party appeal against the decision to grant permission has been submitted by CS Pringle Consulting Engineers, on behalf of Aidan Rehill.

6.1.2. The grounds of appeal includes:

- Low quality and high density.
- Apartments are in contravention of the development plan.
- Devaluation of property.
- Shadows neighbouring property.
- Traffic safety issues.
- Poor design.
- Stated area of 0.21ha includes to the centreline of the adjoining roads. The useable area is 0.175ha.
- Site rises by approx. 1.5m.
- 8 units on 0.175ha represents a density of 46 units per ha. A more typical example of low density would be Oakwood Crescent. Typically a density of 10-15 units per ha – equivalent to 2 or 3 houses on this site. There are no factors to justify the density. The site is well removed from the town centre.
- Design issues – all units to the north are detached. The proposed is a terrace, closer to the road, and not in keeping with the streetscape.
- The sight visibility will be impinged upon by the wall and railing to the front of the proposed houses.
- DMURS – min footpath width 1800mm, proposed is only 1500mm internally within the site. This will not allow 2 persons in wheelchairs to pass.
- The access road into the rear car park is 5.5m wide on plan, The levels indicate an embankment or retaining wall will be required. The road is shown adjoining

the boundary and therefore it hasn't been demonstrated that it can be constructed.

- The parking does not meet required standards. The requirement of 14 spaces plus 1 visitor space is not being met; 12 are proposed. This area already suffers from illegal parking.
- The spaces are substandard. Nos.1 and 5 are truncated by the site boundary and the full 2.5m x 5m required will not be available within the site.
- No turning area is provided. DMURS states a requirement for a turning area where a road exceeds 20m.
- Private open space is below normal standards; units 1 and 6, have 30 and 24 sq m. as 5 person houses the minimum of 48m<sup>2</sup> applies. Guidelines 60-75 m<sup>2</sup> and an absolute minimum of 48m<sup>2</sup>.
- The quality is questionable. That for unit no. 6 is overlooked by the gable windows adjoining and only 7.7m away.
- The principles of BRE 209 Site Layout Planning for Daylight and Sunlight are to be met. This hasn't been carried out. The height of unit 6 and proximity to the adjoining dwelling will result in very significant overshadowing. The ground floor kitchen and living room will be affected. They ask the Board to request an assessment prior to making a decision.
- Surface water design not shown.
- No invert levels or gradients for the foul and storm drainage network are given.
- No public lighting shown.
- A transport assessment should have been provided for the junction with the R212.
- A road safety audit stage one and two should be provided.
- Minimum housing standards are not met: minimum living room width – 3.3m whereas 2.775 is shown in both apartments. An ambulant disabled staircase with a mid-point landing and a maximum rise of 1.7m is required (TG Doc M). It would require internal amendments which will have a significant impact on the internal layout, which may not be implementable. The size and layout of the first floor



bathroom is such that no shower or bath can be installed due to its small size and the requirements for a bulkhead above the stairs from ground floor.

## 6.2. Applicant Response

6.2.1. Genesis Planning Consultants have responded to the grounds of appeal on behalf of the applicant, which response includes:

- Revised site layout incorporating:
  - The provision of a turning head, clarification of how sight splays of 2.4m x 49m are achievable at the entrance to the public road; amendments to the internal configuration of apartments which demonstrates compliance with guidelines.
- Policy context supporting the development is outlined. It is stated that in terms of the apartment guidelines (2018) and car parking (paragraph 4.21) the subject site is an intermediate urban location, where planning authorities must consider a reduced overall car parking standard and apply maximum standards. It is stated that the apartment guidelines (2009) and density (section 5.9 and 6,3 (c)) the proposed density of 38 units/ha is appropriate in terms of the central urban location. A list of objectives taken from the guidelines, and how they are achieved in the proposed development, is set out.
- Responding to the appeal:
  - The whitelands zoning – an allocation of 348 units up to 2020 has been given to small towns and villages. The subject site is infill and is consistent with the zoning and objectives.
  - Apartments and objective 9 – the development plan adopted in 2014 predates the apartment guidelines 2018, para 2.5 is referenced also para 1.20-1.21.
  - Useable site area is referred to in the grounds, there is no basis for referring to useable site area. Gross area 0.21ha 38 units/ha.
  - Sustainable Residential Development in Urban Areas guidelines 2018 (6.3 (c)) – density achieves better utilization of a central urban site.

- Design quality - activates frontage, dual aspect, balance of unit types, finishes, building heights and site layout. There is no established building line at present. Cognisant of buildings opposite, creates a sense of place.
- Access / parking – sightlines achieved (see drawing) at entrance and junction, 1,800mm footpath along frontage, internally paths are not on main thoroughfare but can be widened, no embankment of access road is required, the proposal is appropriate in terms of building line, carparking PIO48, turning head is shown on revised drawing. Compliant with DMURS.
- Site layout, daylight and sunlight – BRE 209 – they provide a cross section which demonstrates how the proposal is adequately separated from appellant's dwelling. They refer to the CDP sec 10 and highlight 'development of a significant height.' The proposal has a lower finished floor level and a marginally lower ridge height than the appellant's dwelling. BRE section 1.6 which states that the advice is not mandatory is referenced.
- Surface water drainage and site services – the planning authority and MD Engineer were satisfied. The letter from IW confirms that the development can connect to their services. Public lighting – they provide technical specification of 'Holophane' which specifications informed the position of public lighting columns. Conditions 5 & 6 refer.
- Traffic – threshold for TIA – residential in excess of 200 dwellings – TII's guide; no TIA is required. Road Safety Audit – TII advice re requirement for Road Safety Audit on national roads. Trans European Network – Transport (TEN-T) since 2011, (European Directive 2008/96/EU). If the Board consider it necessary they are amenable to carrying out a stage 1/2 Road Safety Audit.
- Design Standards – private amenity space below normal standards – at FI stage they were requested to reduce; it was considered appropriate to balance the quality provision of public open space alongside private amenity space. Neither the CDP or the Urban Design Manual prescribe minimum areas for private amenity space. Revised floor plan configurations attached as appendix 2 to the response in compliance with appendix 1 of apartment guidelines; and showing that the first floor bathroom is able to accommodate a shower. Re part M this will

be addressed in due course. Section 7.8 of the Development Management Guidelines is cited and the separate consent process.

### 6.3. Planning Authority Response

6.3.1. The planning authority has responded to the grounds of appeal, which response includes:

- The rationale for the density is set out in the planner's report.
- This development is not predominantly an apartment building.
- It is designed, following pre-application consultation, to provide a more urban form at a strategic site entering the town core. It is designed to replicate and balance the level of urban development already in the vicinity. Given its corner location the site possesses greater scope for a more urban form without unduly affecting the one-off dwellings to the north.
- Re over-development rationale for the density is set out in the planner's report. It meets the requirements of the guidelines.
- Visibility splay – can be met. Section 4.4.5 of DMuRS – 2.4m x 45m.
- This is not a public thoroughfare – the 1.5m footpath is satisfactory.
- Relative ground levels – levels are comparable, a retaining bank is not required.
- Car parking provision of 12 spaces – Objective PIO48 allows for lower provision by exception. Ballyhaise is not identified in the Development Contribution Scheme as having a parking shortfall.
- No turning bay, this is not an oversight; should the Board see fit an amended layout showing a more forward position of car parking spaces 6 & 7 would create the space for a turning area by the proposed bin store.
- Private open space standards are met.
- Re overlooking – overlooking from the appellant's property to the rear garden of plot 7 is mitigated by condition 9 (a) and (b).

- Overshadowing – no material overshadowing. Some compromise is normally accepted to balance the need to protect established amenities and to achieve appropriate infill urban development.
- SuDS – MD Engineer’s response is that the footprint of the proposed development is such that a retention system is not warranted.
- Invert levels – the Board should note condition no 6.
- Public lighting - the Board should note condition no 11.
- TIA – the development does not meet the threshold for requirement. The primary school set-down area is 40m to the south of the junction, sufficiently removed so as not to compromise road safety.
- Road Safety Audit – scale does not require such.
- Living room width (3.3m standard) – the planning authority assessed the apartment floor plans on the basis that they are corner units with an open plan layout tapering from 2,774mm to a maximum width of 3,465mm in a combined kitchen/dining/living room area. On this basis, a reasonable standard of living accommodation is attainable. The proposed development is consistent with the guidelines.
- Stairway design and Building Regulations s34(13) is referred to.
- Bathroom design/space – given the floor plan, dimensions, and section drawing submitted, including floor to ceiling height of ground floor. The planning authority does not support the view that a stairway bulkhead would encroach into the bathroom at first floor to prevent a shower being installed.
- The proposal is a sequential development from the town core and would help fulfil the objectives of more compact and efficient use of urban land as required by the RSES. The development is an alternative to rural housing.

#### 6.4. Further Responses

6.4.1. The appellant has responded to the applicant’s response to the grounds of appeal, which includes:

- NPF advocates quality.

- Rebuilding Ireland - Nothing to justify the proposed density.
- RSES refers to providing for choice and low density housing as an alternative to one off houses outside towns and villages. Nothing to justify the proposed density.
- Urban Development and Building Heights guidelines (2018) – the extract quoted from paragraph 2.4 omits the context where ‘mobility corridors and networks’ have been developed.
- Sustainable Urban Housing: Design Standards for New Apartments guidelines – where conflicts arise plans should be amended and public informed. No change to the CDP has been adopted and therefore the CDP prohibits apartments.
- The Sustainable Residential Development in Urban Areas guidelines (2009) these predate the CDP, which states no apartment development.
- Section 2.5.3 of the CDP states that New residential developments in Tier 4, 5 and 6 Towns/Villages shall not be permitted until such time as existing unfinished sites, live planning permissions and partially developed sites have been completed. A screenshot is provided showing an unfinished development, which has recently received planning permission for 5 houses.
- The appellant asserts that their calculation of density is based on the correct site area, and illustrates this by map, and with extracts from the Sustainable Residential Development in Urban Areas (SRDUA) guidelines. They develop the argument regarding appropriate density with a table stating the number of houses in various development in Ballyhaise with site areas and densities stated for 8 schemes total 189 dwellings, together with a map identifying their locations. The proposed development has a density of 45.1 dwellings/ha. This is considerably higher than the upper two quartiles of all previous developments, more than double the middle two quartiles and more than triple the lower two quartiles.
- This location is best fit to clause 6.12 (c) edge of small town/village – 15-20/ha SRDUA, even if edge of centre that is 20/35/ha. Reducing the number of dwellings to 4 would yield a density of 22.4/ha and make it easier to achieve high quality.
- Re inadequate parking it is erroneous to describe this location as an intermediate urban location per SRDUA. It is inappropriate to consider it as such as it is not within walking distance of a principal town or suburban centre or employment location, not

within walking distance of high capacity urban public transport or high frequency bus, or within easy walking distance of reasonably frequent urban bus centre. It is a peripheral and / or less accessible urban location. If the dwellings were apartments 10 spaces would be required. As proposed 14 – 15 spaces are required (2 per dwelling and 2-3 for the apartments). Extracts from SRDUA are provided. In the revised site layout provided to the Board, there is now no disabled parking space and a reduction in the number of spaces from 12 to 11. The proposed turning circle is inadequate and it would be necessary to omit a further 3 spaces to facilitate the necessary swept path. The private open space of house no. 1 is also compromised.

- The proposed sightlines at the entrance are challenged regarding the 'x' distance which should be measured from the continuation of the line of the nearside edge of the major arm, not forward of it as in the point used. A potential blind spot identified in the left sightline, has not been examined.
- The internal roadway runs along the boundary and an estimated difference in level of 1.1m exists between roadway level and the boundary; the accommodation of the change in level is not shown.
- Re. stairs designed for ambulant disabled, the appellant indicates how its provision would reduce the width of the living area below the 3.14m (0.95 x 3.3m) the minimum required.
- Appellant argues that a terrace is inappropriate on this side of the road.
- The open space provision is inadequate. The area reduction which would be involved in the provision of a turning head is illustrated.

6.4.2. The planning authority has responded to the first party response to the grounds of appeal, which response includes:

- The planning authority reiterates national policy objectives 3A, 4, 11 and 13 and regional policy objective 3.3 of the North and West RSES to deliver 20% of all new housing in rural areas on brownfield sites. The proposed development would help to fulfil this objective. The planning authority would accept the proposed revisions.

## 7.0 **Assessment**

7.1. The issues which arise in relation to this appeal are: appropriate assessment, the principle of the proposed development, the amenity of the adjoining residential property, residential development standards, roads traffic and parking, and other issues and the following assessment is dealt with under these headings.

### 7.2. **Appropriate Assessment**

7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

### 7.3. **The Principle of the Proposed Development**

7.3.1. The principle of the proposed development is challenged in the grounds of appeal in various respects.

7.3.2. It is stated that the apartments are in contravention of the development plan. The proposal incorporates two apartment units in an overall development of 8 units. It is not an apartment development.

7.3.3. It is stated that the density of the proposed development is excessive and the method of measuring density is contested between the parties. In my opinion the acceptable quantity of development in the case of this site is determined by other factors such as site constraints, the opportunity to create street frontage, providing development of an acceptable standard and protecting the amenities of the area etc, rather than a density measurement.

7.3.4. It is stated that the proposed development is not in keeping with the streetscape, with the proposal being a terrace closer to the road, and all units to the north being detached. The proposal being a terrace arose for discussion at the pre-planning meeting and the setting of the building close to the road, to create a street edge at this location has been led by the planning authority and has influenced the quantity of development which the planning authority has found acceptable. The planner's report refers to the sites corner location that has potential to reinforce the street

pattern and balance both sides of the R212 on the approach to the town centre. 'A reduction of building footprint would ...reduce the effectiveness of the above urban design contribution.'

- 7.3.5. I note the appellant's argument that the development to the north, on this side of the road, is detached, the development on the other side of the road, both older and newer buildings, form a street edge. In my opinion the creation of street frontage, where there is limited street edge development in the centre of this growing town, is a reasonable objective. I accept that the form of development proposed achieves this objective. I do not however agree that a limited reduction of building footprint would reduce the effectiveness of the proposed development in creating a street.
- 7.3.6. The proposed development would result in the loss of a single dwelling, but would provide multiple dwellings in an urban area where there is access to services on foot, reducing the demand for travel by car. For some people the proposed development would offer the choice of community living in preference to rural isolation; and in the format proposed would contribute to the provision of a street. In my opinion the proposed development is acceptable in principle.

#### **7.4. Amenity of Adjoining Residential Property**

- 7.4.1. The impact on the amenity of the appellant's adjoining residential property to the north is the subject of the grounds of appeal. It is stated that the proposed development will devalue and overshadow the adjoining property.

#### **7.5. Overshadowing**

- 7.5.1. There are three windows on the gable of the adjoining dwelling to the north, two at ground floor and one at first floor. Due to the building line the rear of the proposed block is not in line with two of the windows but it is in line with one ground floor window, a corner window, part of a pair of windows, with the larger of the pair facing the road. As proposed the buildings will be 7.720m apart. The proposed development will lead to some loss of light to this window and this has not been measured as part of the proposal. It is worth noting that the development plan states that a development of a significant height may require daylight and shadow projection diagrams in accordance with 'Site Layout Planning for daylight and Sunlight: A Guide to Good Practice' (BRE 1991) or 'B.S. 8206 Lighting for Buildings



Part 2 1992: Code of Practice for Day lighting. The proposed development would not be described as a development of a significant height, it is akin to a change from the existing bungalow on the site to a two storey dwelling and therefore in my opinion does not require the production of daylight and shadow diagrams as described above. The existing bungalow being close to the boundary and in line with the adjoining dwelling impacts on the daylight received by the windows to the north. The proposed layout would have less impact. It should also be noted that the subject development is to the south of the adjoining property and that some loss of sunlight is therefore likely to occur.

7.5.2. Notwithstanding the foregoing I do not consider that the shadowing impact taken on its own would be such as to require the refusal or modification of the proposed development.

#### 7.6. Devaluation

7.6.1. No details are given in relation to the concern regarding devaluation of the adjoining property. As regards overlooking currently the development on site is a bungalow. The provision of first floor windows will have some impact in terms of overlooking but the overlooking will not be from side windows and will be indirect. It will be similar to what would occur if a two storey dwelling was built in replacement of the bungalow. There are no windows in the gable elevation of house no. 6 and therefore no overlooking of the windows of the adjoining property. Due to the cranking of the building line rear windows of houses 2, 3 and 4 and the balcony of the first floor apartment will have oblique views towards the side of the adjoining property but they will be a considerable distance away. No significant overlooking is involved. In my opinion devaluation of property is not such as to require the refusal or modification of the proposed development.

#### 7.7. Residential Development Standards

7.7.1. The standard of the residential development proposed has been raised as an issue by the appellant.

7.7.2. It is worth noting that the first floor apartment as shown in the drawings submitted with the appeal has an outdoor private open space of 5 m<sup>2</sup> and is therefore compliant with the minimum standards for private amenity space – a one bedroom

unit provided with 5 sq m, in the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2018. The area allocated to this unit at the front of the building is for access only.

- 7.7.3. The response to the grounds of appeal, in relation to the issue that minimum housing standards are not met including the minimum living room width of 2.775m rather than the 3.3m minimum width required, refers the Board to revised floor plan configurations attached to the response, stating that both apartments comply with the minimum living room widths and aggregate areas as per appendix 1 of the Apartments Guidelines. The revised floor plan configurations shown in drawing no. PP-03 18-113 show that the Living / Dining / Kitchen area has been reorganised so that the living area is at the rear rather than at the front, as shown in the original drawings. However the narrowest dimension of the living room portion of the layout remains below the required 3.3m width in both apartments. In addition the minimum 3.3m width in the guidelines refers to living room and dining room areas. The area nominated as the dining room has a width of only 2.773m in the ground floor unit and only 2.774m in the first floor unit, well below the minimum widths required. The confined nature of these units can also be seen in the awkward triangular shape of the ground floor shower and in the fact that although raised as an issue, the layout revision has not been able to address the requirement for the stairway to be designed for ambulant use; stating that the matter is one of Part M compliance, will be addressed in due course, and is not an appropriate consideration for the Board.
- 7.7.4. Under the heading 'access for all' the Sustainable Residential Developments in Urban Areas-Guidelines for Planning Authorities (May 09), states that circulation within buildings should have regard to the varying needs of occupants over their lifetimes, including needs associated with mobility difficulties and the normal frailty associated with old age. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2018) places reliance on Part M to ensure that buildings are accessible and usable by everyone, including children, people with disabilities and older people.
- 7.7.5. Having regard to the constraints created by the cranking of the building in the area occupied by the apartments and the confined space available which has thrown up other layout concerns, it seems reasonable that the resolution of this fundamental design issue should be addressed within the planning application.

- 7.7.6. Another concern regarding the quality of the residential accommodation which would be provided, is the fact that the first floor apartment alone will not enjoy direct access to the grounds to the rear. It is a beneficial aspect of the design that all units have a door directly accessing the amenity space, car and bicycle parking areas and refuse storage to the rear of the building. The first floor apartment is required to access these areas from the front of the building.
- 7.7.7. In my opinion notwithstanding the desirability of providing a substantial building to create a street edge, the apartment units within the proposed development, would be substandard, requiring this part of the development to be redesigned. A single unit occupying this floor space would be a suitable solution.

## **7.8. Roads Traffic and Parking**

- 7.8.1. The width of the access road and footpath, and the potential for the boundary with the builders' providers, being higher than the proposed road, to require additional space for some treatment of the difference in levels, is raised in relation to the confined width between the building and the boundary. There was a slight gradient across the flat site, perhaps 0.5m, but not to the extent claimed by the appellant (1.5m) (drawing no. PP-05-18-113 shows contour lines and spot levels). In my opinion the difference in levels does not require special treatment for the road edge, but the Board will note that the road itself runs unduly close to the boundary. The narrow width of the footpath is not of concern on this private roadway with very little potential use.
- 7.8.2. The grounds of appeal states that the proposed internal road requires a turning head; the applicant's response is that a turning head can be provided within the site, should the Board require it, with a drawing showing such provision; the further response to this layout by the appellant, is accompanied by an alternative layout showing the extent of layout revision required to accommodate a properly designed turning head. The Board should note that the planning authority gave consideration to the roads and traffic implications of the proposed development, which is of modest scale in terms of traffic impacts, and that the Municipal District Engineer was satisfied with the proposal, which did not include a turning head. I am satisfied to rely

on this assessment, and I would recommend that the Board does not require the provision of a turning head within the site.

- 7.8.3. The amount of car parking to be provided is referred to in the grounds of appeal as being inadequate. The proposal is to provide 12 spaces including one disabled space. The appellant states that 14 spaces plus a visitor space is the requirement. The planning authority assessed the number required as 14 in accordance with the development plan standards but was satisfied with the level of provision. I note that this is not a large town and that no claim has been made regarding the availability of a comprehensive public transport service, nevertheless I am satisfied that the central location means that the proposed development is accessible on foot to most basic services, which reduces the demand for car use and the requirement for parking spaces.
- 7.8.4. The available sightlines is questioned in the grounds of appeal which states that that the sightlines at the proposed entrance will be impinged upon by the wall and railing to the front of the proposed houses and that a blind spot may be created in the proposed curve of the road. In my opinion no such concerns arise.
- 7.8.5. The proposals to provide a footpath on the opposite side of the local road, accommodated by setting back the fence line of the site along this road; and to provide a new footpath across the frontage of the site along the regional road, accommodated by setting back the fence line of the site along this road, with a landscaped area between the new footpath and the regional road; and to carry out the work of constructing these footpaths and reconfiguring the road junction; and to provide a pedestrian crossing from the school to the new footpath; represents considerable planning gain.
- 7.8.6. In this regard I would note for the Board's consideration, condition no. 10 of the planning authority's decision, which states:
- The developer and/or the management company shall be responsible, including costs, for the upkeep and maintenance of the low-level landscaping along the public road to the front of the proposed development.
- Reason: In the interests of visual amenity.

- 7.8.7. The Board should note that condition no. 4 of the decision requires the vesting of the area forward of the new front boundary to the planning authority, following completion of the works to the road and footpaths and prior to the occupation of any unit. In my opinion the developer's responsibility for the area outside the site should cease on the transfer of the ownership and it would be unreasonable to require the applicant / developer to continue to maintain this area.
- 7.8.8. In my opinion the impact of the proposal in terms of roads, traffic and parking issues, is beneficial, and roads, traffic and parking should not be a reason to refuse or modify the proposed development.

### 7.9. **Other Issues**

- 7.9.1. The grounds of appeal states that the surface water design is not shown and that no invert levels or gradients for the foul and storm drainage network are given. Both Irish Water re. foul drainage and the planning authority re. storm drainage, are satisfied with the proposed development.
- 7.9.2. The grounds of appeal states that no public lighting is shown. Details of proposed public lighting are provided and this is addressed in the reports on file and in condition no. 11 which requires public lighting to be in accordance with Cavan Co Co External Lighting Policy.
- 7.9.3. The grounds of appeal states that transport assessment should have been provided for the junction with the R212 and that a road safety audit stage one and two should be provided.
- 7.9.4. The response to the grounds of appeal points out the threshold for a transport impact assessment (TIA) which is very considerably in excess of the scale of the proposed development.
- 7.9.5. In relation to a road safety audit, they are amenable to carrying out a stage 1/2 Road Safety Audit, if the Board consider it necessary. Since the proposed development includes works to a public road the Board may consider that a Road Safety Audit is required.

## 8.0 Recommendation

- 8.1.1. In accordance with the foregoing, I recommend that permission should be granted, for the following reasons and considerations and in accordance with the following conditions.

## 9.0 Reasons and Considerations

- 9.1.1. Having regard to the location of the proposed development within the town of Ballyhaise and close to its core, where the terraced format would reinforce the urban fabric, and where the provision of residential accommodation would reduce the demand for motorised travel; the development as proposed would accord with the development plan provisions, would improve traffic circulation and pedestrian safety in the area, would not unduly impact on residential amenity, and, subject to the following conditions, would be in accordance with the proper planning and 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 5th day of October 2020 and the 17th day of December 2020, 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.  <b>Reason:</b> In the interest of clarity.
2.	The proposed apartments shall be omitted and a two storey dwelling provided in their place. Revised drawings showing compliance with this

	<p>requirement shall be submitted for the prior written agreement of the planning authority.</p> <p><b>Reason:</b> To ensure that the residential development to be provided is of an adequate standard.</p>
3.	<p>Prior to commencement of development, engineering drawings of the proposed layout and design of the footpaths, roadway and the junction layout for the works outside the proposed front boundary of the development, shall be submitted for the written agreement of the planning authority.</p> <p><b>Reason:</b> To ensure that the overall development is of an adequate standard.</p>
4.	<p>Prior to commencement of building construction, works to the R212 and the realigned L20021-0, as far as and including the proposed entrance shall be completed. Following completion of the proposed works to the satisfaction of the planning authority the areas within the applicant's ownership forward of the boundary walls shall be vested in the Local Authority at no cost to the authority.</p> <p><b>Reason:</b> To ensure that the overall development is of an adequate standard.</p>
5.	<p>Prior to commencement of development, a landscape plan, shall be submitted for the written agreement of the planning authority.</p> <p><b>Reason:</b> To ensure that the overall development is of an adequate standard.</p>
6.	<p>Prior to commencement of development brick colour and product, and the position of downpipes on all elevations to be submitted for the written agreement of the planning authority.</p>

	<b>Reason:</b> In the interest of clarity.
7.	<p>Prior to commencement revised details of bicycle parking, to include a designed shelter, to be submitted for the written agreement of the planning authority.</p> <p><b>Reason:</b> To ensure that the overall development is of an adequate standard.</p>
8.	<p>The front boundary walls facing the public road shall be of brick to match the remainder of the development.</p> <p><b>Reason:</b> In the interest of clarity.</p>
9.	<p>Public lighting to be in accordance with Cavan Co Co External Lighting Policy.</p> <p><b>Reason:</b> To ensure that the overall development is of an adequate standard.</p>
10.	<p>Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
11.	<p>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.</p>



	<p><b>Reason:</b> To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
12.	<p>Prior to commencement of development, the developer shall enter into water and waste water connection agreements with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
13.	<p>The developer shall pay to the planning authority a financial contribution of €35,000 (thirty five thousand euro) 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. The application of any indexation required by this condition 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.</p> <p><b>Reason:</b> 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.</p>

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Planning Inspector

July 2021

## Appendices

Appendix 1 Photographs

Appendix 2 Cavan County Development Plan 2014-2020, extended - extracts