



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309984-21

---

<b>Development</b>	Construction of 3 dwelling houses.
<b>Location</b>	Mounthamilton, Carrickmacross Road, Dundalk, County Louth
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	20660
<b>Applicant(s)</b>	Kay Conroy
<b>Type of Application</b>	Permission Consequent
<b>Planning Authority Decision</b>	Grant Permission Consequent
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Benny & Patricia Lynch
<b>Observers</b>	Rosemary McBride Fiona Smyth McKeown
<b>Date of Site Inspection</b>	20 <sup>th</sup> of July 2021
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1. The site (stated area 0.212ha) is located at Mounthamilton, Carrickmacross Road Dundalk, Co. Louth. It is currently undeveloped and is located in the residential area, with housing to the east, west and south of the site. The site frontage and the access is to the R178 Carrickmacross Road. There is an area of open space and the Dundalk Cricket Club and Oriel Park Stadium are further to the south-east. Dundalk train station is further to the north-east.
- 1.2. There is a bungalow to the north-east of the site, that is served by a separate entrance proximate to the existing gated access to the site (which is not within the red line boundary). This bungalow is surrounded by a high wall/fencing along its site boundaries. There is a housing development to the east of this with separate entrance to the Carrickmacross Road. Also, there is gated entrance to the private access avenue to 'Brighton Villa' to the southeast.
- 1.3. There are trees and shrubs along the site boundaries, which, currently provide some screening. There is a bungalow to the west, which includes a long rear garden that abuts the site. This is generally well screened by trees and shrubs, along the boundary with the subject site. While there are some rooflights, there are no first-floor windows in the side elevation facing the site. This also has separate access to the Carrickmacross Road.
- 1.4. The residential cul-de-sac estate Willow Grove lies to the south and backs onto the proposed development site. The site is on a lower level (in excess of 1m lower) than the houses to the rear (nos. 57 – 60) Willow Grove. There is a high wall with metal fence on top (not in good condition) along the rear boundary of no.57 and part of no. 58. This appears to be in excess of 3m in height from the ground level of the subject site. There are trees/hedgerows along the remainder of the southern site boundary.

## 2.0 Proposed Development

- 2.1. This application is for a Permission Consequent on the Grant of Outline Permission under Planning Reg.Ref. No.17597 at this site at Mounthamilton, Carrickmacross Road, Dundalk, Co. Louth.

- 2.2. The proposed development is to consist of Permission Consequent for 3no. Dwelling Houses and Associated Site Development Works.
- 2.3. Drawings have been submitted to include Site Layout Plan, Floor Plans, Sections and Elevations.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

On the 26<sup>th</sup> of March, 2021 Louth County Council granted permission for the proposed development subject to 13no. conditions. These included relative to boundary treatment, construction management, development contributions, development bond, alterations to the existing footpath and paving surfaces, public lighting, estate names, Construction and Demolition Waste Management Plan, dust and noise emissions, public road and footpaths to be maintained in a tidy conditions, removal and rerouting of overhead cabling onsite.

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

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

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

- The relevant conditions of this Permission Consequent application relate to the design and layout of the three houses on the subject site – Condition no.3 of the outline permission refers.
- They had concerns about the proposed design and layout and impact on adjoining residential properties.
- They considered that the proposed first floor windows on the house types proposed on site nos. 1 & 2 may offer the potential of overlooking.
- Details of boundary treatment have not been provided.

- They recommend that cross sections be sought to assess the impact of the proposed design and layout upon the residential properties in Willow Grove to the south.
- Condition no. 7 of 17/597 will be applied for the access in the event of a positive decision on the subject application.
- They do not consider that the proposal on a fully serviced site will impact on Natura 2000 sites.
- The subject site is not located within the area of known fluvial/pluvial flooding.

#### Further Information request

- Reference is had to Condition no.3 of the Outline permission, the submissions made and to concerns, including overlooking of nos. 57 & 58 Willow Grove to the south relative to the proposed design and layout at Permission Consequent stage. The applicant was requested to indicate all finished floor and proposed site levels, heights and boundary details between both sites so as to assess the location and orientation of these properties at this location.
- Scaled drawings to indicate ground levels and the height of boundary treatment along the southern boundary of the site.
- Revised Public Notices.

#### Further Information response

P.Herr & Associates response on behalf of the Applicants includes the following:

- The design of the proposed dwellings has been amended to address the concerns raised by the Planning Authority and the owners of adjoining properties in Willow Grove. This includes amendments to remove the first floor windows from the rear elevations.
- They have slightly re-orientated the houses within each site to maximise the separation distance from the southern (rear) boundary.
- The amendments to the Site Layout have no material impact on the layout of the access road and services (water, foul sewer, surface water) as approved under the outline permission (Ref.17597).

- They attach cross sections taken through Site No.1 and Site No.2 and the adjoining premises to the south. Each cross section includes chainages, floor levels, ridge levels, ground levels and boundary details.
- They note issues with the form of the existing boundary wall and provide details of the replacement boundary wall. It is proposed to provide a consistent 2m high capped block wall replacement boundary along the entire southern boundary.
- They provide that no encroachment of third party lands shall take place and all piers shall be placed on the north side of the wall (i.e. within the subject site).
- They note drawings showing details of the proposed boundary wall construction.
- Revised Site Notices have been submitted and significant alterations include:
  - Changes to the proposed house type
  - Changes in Site Layout
- The proposed alterations do not change the description of development as previously submitted.
- They include a schedule of documents being submitted in response to the Council's F.I request.

#### Planner's response

They had regard to the revised plans in the F.I submitted and to the third party submissions made. Their response included the following:

- They considered that the protection of residential amenity has been afforded to the residents of Willow Grove.
- They do not consider that the proposed development given the lateral separation between it and adjoining properties as well as their associated amenity spaces would give rise to any significant additional overshadowing.
- They conclude that the proposed development has addressed the concerns relating to the protection of residential amenity of adjoining properties and the

development accords with the residential zoning as set out in the Dundalk & Environs Development Plan. They recommended that permission be granted subject to conditions.

### 3.3. **Other Technical Reports**

The Planner's Report provides no referrals were made.

### 3.4. **Prescribed Bodies**

The Planner's Report provides that no referrals were made as this is a permission consequent application.

### 3.5. **Third Party Observations**

Submissions were made by proximate local residents including the properties at the rear nos.57 & 58 Willow Grove. These included concerns regarding the impact of the proposed design and layout on their properties and issues of difference in levels and overlooking. Their concerns are considered further in the context of the Grounds of Appeal, the Observations made, in the Assessment below.

## 4.0 **Planning History**

The Planner's Report provides details of the planning history in the area. The following are of particular note:

- Reg.Ref. 17/597 – Outline Permission granted subject to conditions by the Council to Kay Conroy for 3no. dwelling houses and associated site development works. This was dated 10<sup>th</sup> of January 2019.

Conditions of note relevant to the Permission Consequent include relative to design and layout, landscaping, infrastructure including the disposal of surface water and access, construction management, development contributions.

- *Condition no.3 – Details relating to design, orientation, height and external appearance of the proposed dwelling to be submitted to and*

*approved by the Planning Authority (Permission consequent on an outline) prior to the commencement of any work on this development.*

*Reason: In the interest of orderly development.*

- Condition no. 7 – Details include relevant to the access.

The area of the site (as shown on the 'Existing Site Layout Map' – Outline Permission) is given as 0.212ha.

A copy of this Outline Permission is included in the History Appendix.

## **5.0 Policy Context**

### **5.1. Louth County Development Plan 2015-2021**

This Plan provides the strategic planning policies and objectives for the County. Section 2.16.4 notes that the Statutory Plan for Dundalk and the surrounding area is currently the Dundalk and Environs Development Plan 2009-2015 and Policy SS3 seeks: *To review the Dundalk and Environs Development Plan 2009 – 2015 and to prepare a Local Area Plan for Dundalk and Environs which will be consistent with the provisions of the County Plan.*

In addition to the County Development Plan, I have reviewed the Dundalk Town & Environs Development Plan 2009 – 2015 as this provides the most recent zoning framework for the area.

### **5.2. Dundalk & Environs Development Plan 2009-2015**

This remains the operative plan for the area.

Housing and Community Facilities - Design and Layout

Section 6.2.1 (Table 6.1 and Table 6.1 refer) provides the Residential Zoning Objectives. The subject site is located in RES 1(serviced) where it is an objective of the Council: *To protect and improve existing residential communities and to provide for infill and new residential developments.*

Section 6.6.6 notes the need to adhere to Building lines, and that particularly established ones, relative to infill development sites should be *respected*.

Section 6.6.7 refers specifically to Infill/Backland development i.e: *Infill development is small scale development located in gaps between existing buildings. This includes: The following guidance is applicable to out of town centre residential sites. Development on these sites should match existing surrounding development in terms of design, scale, height and the building line should be in keeping with the existing development and should not be detrimental to the local existing residential amenities in the area.*

This also refers to Design and Scale i.e. *The design and scale of the proposed development should be in keeping with the surrounding character of the area. The proposed design, orientation and massing shall not cause any unacceptable overbearing or overshadowing on existing dwellings and the applicant will be required to demonstrate that there are no adverse effects on the existing buildings.*

Reference is also made to such issues as Density, Access, Materials, Open Space provision and car parking.

Section 6.7.5 refers to Privacy and Spacing between Buildings i.e. *A distance of at least 22 metres is recommended between the windows of habitable rooms which face those of another dwelling. In the case of windows of non-habitable rooms within 22 metres of another facing window, obscure glazing may be acceptable.*

Also: *Where new dwellings are located very close to adjoining dwellings, the planning authority may require that daylight and shadow projection diagrams are submitted. The recommendations of 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' (B.R.E.1991) or B.S. 8206 'Lighting for Buildings, Part 2 1992: Code of Practice for Day lighting' should be followed.*

Section 6.7.13 refers to Boundary Walls. This includes: *A 2 metre high masonry wall should be provided along the rear boundary of all new residential proposals.*

### **5.3. Natural Heritage Designations**

The appeal site is not subject to any natural heritage designations. Dundalk Bay SPA (004026) & SAC (000455) lie approx. 2km north and northeast of the appeal site.



## 5.4. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity and the absence of direct connection to any sensitive location, 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

A Third Party Appeal has been submitted by Benny and Patricia Lynch, who reside at 57 Willow Grove to the south (rear) of the site. Their Grounds of Appeal include the following:

- The rear boundary of the site, which abuts their rear boundary consists of an existing boundary approx. 2.6m high with additional clad sheeting attached to it (erected by themselves approx. 20 years ago with permission from the then owner of the site at a cost of c. €2,000). This gives a total height of approx. 3.9m and continuing with 3.9 metres wall for the remainder of its length.
- They note the planner was unable to assess the site at outline permission stage and consider that it would appear that that decision was granted based on the submission by the applicant, thus allowing the Principle of Residential Development for 3 housing units to be established, without a proper assessment of the site.
- The present permission consequent application is the subject of their appeal.
- The lodged proposed Site Layout Plan shows a 2m high wall to form the southern boundary between the site and Willow Grove. It did not indicate the level difference at the southern boundary of the site.
- They consider that the wall proposed in view of the difference in levels between the sites, would not protect their privacy and amenity.

- The two storey dwellings were shown located 6.58m from the rear boundary with excessive glazing at first floor level on rear elevations.
- Their objection mainly concerned excessive overlooking of their entire rear garden because of differences in levels of the sites. No levels were shown on the submitted drawings to indicate this and allow a proper assessment.
- They refer to the further information submitted and to the revised site layout plan, which now shows dwelling no. 2 closer to their site boundary. Also, that a 2m high concrete block wall is to be constructed along the rear site boundary.
- They refer to the cross sections and are concerned about overlooking and loss of privacy of their rear garden area.
- Sections show that the ground level at the rear of no. 57 Willow Grove and the top of the proposed boundary wall are approx. at the same level.
- The rear of proposed dwelling No. 2 (new development) is a little over 1m lower than the top of this proposed boundary wall which is 5.92m distant from the boundary. House no.2 was originally shown 8.5m from the rear wall of the dwelling to the boundary wall while on the revised plan 5.92m is shown. They consider this discrepancy to be misleading.
- The height of the existing rear boundary wall/fence (i.e. 3.9m) is to be replaced by a 2m wall which having regard to the difference in levels in the adjoining sites, will lead to overlooking of their property.
- The top of the proposed wall is approx. 1.2m higher than the ground floor level of proposed dwelling no.2 allowing serious overlooking into the private amenity space of the long-established housing unit no.57 Willow Grove.
- They note the revised plans and contend that while the windows have been removed at first floor level serious overlooking would still remain from all the glazing and active circulations at ground level of these units.
- They refer to the back to back 22m separation distance, and consider that this is a generic distance, and that as can be seen from the cross section

drawings submitted, protection of their residential amenities has not been achieved. They submit that serious overlooking will result.

- They query as to whether the proposed design and layout could be altered so as to reduce overlooking of the rear of their property.
- The proposal to construct a 2m high boundary wall on the southern boundary would be inadequate to protect the amenity of no. 57 and other dwellings in Willow Grove because it would be constructed in a hollow at lower level, providing no protection for overlooking.
- Should the Board decide to grant they request a condition be added to retain the existing boundary wall in its entirety along the southern boundary at no.57 Willow Grove.

## 6.2. Applicant Response

P.Herr & Associates response on behalf of the Applicants includes the following:

- The appellant's concern primarily relates to the impact of the development, particularly Site No.2 on the residential amenity of their own dwelling (57 Willow Grove, Carrick Road, Dundalk).
- They make general comments regarding the revisions made to the design and layout and these are noted further in the Assessment below. They consider that these changes will lesson any impact on residential amenity.
- The southern boundary wall shall act as the party boundary wall between the boundary site and the appellant's site.
- The applicant has no objection to the existing boundary wall over this section of the southern boundary being retained in its current condition subject to being able to carry out the following works:
  - Closing up of any window openings
  - Provision of additional support piers
  - Application of a plaster coat finish to the north face
- All works shall be carried out on the north side of the wall with no encroachment, unless by agreement, on the appellant's lands.

- They have no objection to the Board inserting a condition to this effect as part of any planning permission.

### 6.3. Planning Authority Response

Their response includes the following:

- The principle of 3 houses on site has been determined as part of the outline permission granted (Ref.17/597 refers). They have undertaken a site inspection on foot of the significant F.I submitted to the P.A.
- They consider that given the location of the site within serviced and zoned land in a regional growth centre, the provision of 3no. detached dwellings on a site extending to 0.212ha is not excessive development.
- Taking into account, the location of the site within serviced zoned land in a regional growth centre, a potentially higher density scheme could have been considered.
- However, the principle of 3no. dwelling houses has been established on site and the permission consequent was adjudicated on the basis of the parent permission.
- They do not concur that the houses have been squeezed into the site. They consider that the houses have been designed and laid out taking account of standards set out in the Dundalk & Environs Development Plan.
- The PA took into consideration matters pertaining to qualitative and quantitative open space for future residents in addition to ensuring a level of protection to existing residents in the vicinity and particularly the residents in Willow Grove.
- The PA accepts that there is a level change between the Willow Grove and the Carrick Road, however it is considered with appropriate boundary treatment the residential amenity of the existing proposed residents can be maintained.

- The appellant is not being penalised for having a large garden but rather the proposed development has been assessed on standards within the operational development plan.
- The Planner's Reports address all the other matters referred to in the appeal.
- They request the Board to uphold the decision of the PA to grant permission subject to all conditions attached to the notification of permission.

#### 6.4. Observations

These have been received from the following local residents:

- Rosemary McBride
- Fiona Smyth McKeown

For convenience, their concerns are summarised under headings as follows:

##### Construction related issues

- Concerns about the impacts of Construction on proximate neighbouring properties.
- The proximity of dwelling no 3 undermining the adjoining boundary/retaining wall foundations. Possible subsidence.

##### Impact on Residential Amenity

- Residential Amenity of adjoining properties, including those to the north-east and west, with frontage to the Carrick Road, has been compromised. Their concerns have not been addressed in the Planner's Reports.
- Concerns about the new orientation and position of the proposed 3no. dwelling houses.
- The proposed dwellings have been made larger and appear squashed into the available site. All dwellings have been moved closer to the north, south and western boundaries in order to accommodate the increase in size.
- The proposal, including the revised plans would result in overlooking and loss of privacy of adjoining properties. Windows would also overlook the properties to the north-east and west of the site.

- The proposed dwelling on site no.1 has been moved closer to the western boundary. In the previous proposal the distance to the boundary was 7.15m which has now been reduced to 2.53m.
- The proposed development does not ensure a reasonable protection of residential amenities as established in this residential area.

#### Boundary Treatment

- There is no secure boundary treatment along the western site boundary, impacting on their security and privacy.
- No proposal is being made to provide a solid boundary of a suitable height along the western boundary, similar to that of the southern boundary, in order to improve the situation.

#### Access issues

- Concerns about safety and visibility when exiting/entering adjoining property to the north-east on Carrick Road.
- The access does not appear to have been considered in the current application.
- The access to the proposed development particularly the roundabout is very close to the western boundary and there are concerns about impact on the privacy and security of the dwelling to the west.

#### Electrical Overhead Wiring

- Concerns that consideration has not been given to the relocation of Electrical High Tension overhead wires (10KV) and that this would end up being closer to the property to the west.

## **7.0 Assessment**

### **7.1. Planning Policy**

- 7.1.1. The site is located in the residential area within the development boundaries of Dundalk as shown on the Dundalk and Environs Development Plan 2009-2015 (as extended). Map 1 shows that the Site is within the western boundaries of the Town,

zoned RES 1 – Residential, where the objective seeks: *To protect and improve existing residential amenities and to provide for suitable infill and new residential developments. This also seeks to: Ensure that any new development in existing area would have a minimal impact on and enhance existing residential amenity.*

Therefore, sustainable infill development would be in accordance with the residential zoning objective.

- 7.1.2. Regard is also had to the 'National Planning Framework Plan 2040' which seeks to increase housing supply and to encourage compact and urban growth, supported by jobs, houses, services and amenities rather than continued sprawl and unplanned, uneconomic growth. Chapter 4 refers to *Making Stronger Urban Places* and includes National Policy Objective 4 which seeks to: *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.*
- 7.1.3. Also of note is Section 5.9 of the 'Sustainable Residential Development in Urban Areas Guidelines, 2009' which provides: *In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.*
- 7.1.4. In the current case it is noted that an Outline Permission for 3no. houses has already been granted (Reg.Ref.17/597 refers) so that the principle of development has already been established. This application is for Permission Consequent. Section 36(4) of the Planning and Development Act, 2000 (as amended) states that: *Where an application for permission is made to a planning authority consequent on the outline permission, the planning authority shall not refuse to grant permission on the basis of any matter which had been decided in the grant of outline permission, provided that the planning authority is satisfied that the proposed development is within the terms of the outline permission.*
- 7.1.5. It is noted that Condition no. 3 of the outline permission is relative to the design and layout and this is the subject of the current application. As noted in the Planner's Report (Roads and Traffic Section), the access has been addressed at the outline application stage. Regard is had to the documentation submitted, including the

revisions made at further information stage, to the grounds of appeal and to the Observations made and the First Party response in this Assessment below.

## 7.2. Design and Layout

- 7.2.1. The layout originally submitted with the permission consequent application, showed 3no. detached two storey houses, with all ancillary works including access and infrastructure provision, all on a site of 0.212ha. The layout of the site and the location of the proposed dwellings was relatively similar, to that indicated on the Site Layout Plan of the Outline Permission (Ref. 17/597 refers). The g.f.a of each of the dwellings was shown as 150.4sq.m each. They were shown 8.38m to ridge height. The proposed house design included windows at first floor level front and rear. Subsequent to the third party concerns regarding overlooking and loss of privacy particularly to nos.57 and 58 Willow Grove to the south at the rear, which are on a higher level, and the Council's F.I request, revised plans were submitted showing some revisions to the scheme.
- 7.2.2. The revised plans show different house types, with the first-floor windows replaced by velux roof lights to reduce the issue of overlooking. The revised house types are also 2 storey detached houses and have a g.f.a of c.146.63sq.m. and 7.37m to ridge height. There are some minor differences between house types 1 and 2 mainly concerning the location of the single storey element at the rear. House type 2 is to the rear of nos. 57 and 58 Willow Grove. The First Party response to the appeal lists the changes made and these are as follows:
- No windows are proposed at First Floor Level of Unit No.2
  - The Floor Level of the proposed Unit No. 2 (13.8m) is 1.0m lower than the Floor Level of 57 Willow Grove (14.80)
  - The Ridge Level of the proposed Unit No.2 (21.17m) is 1.23m lower than the Ridge Level of 57 Willow Grove (14.80)
  - The absolute minimum back to back distance between the proposed Unit No.2 and 57 Willow Grove is 23.80m
- 7.2.3. Sections have been submitted showing the proposed dwellings at a lower level than nos.57 and 58 Willow Grove to the rear. The Site Layout Plan shows that the rear of



the proposed dwellings will be in excess of 22m from the rear of these properties. I would consider that the omission of the first floor windows in the revised house types and the reorientation proposed will assist in reducing overlooking. Therefore, the impact of the revised plans, taking into consideration the change in house type and the re-orientation on site is less than that originally proposed.

- 7.2.4. However, there is concern from proximate residents that the changes to the proposed layout, will result in the revised house types being set closer to their site boundaries. The Observer to the west is concerned that the proposed house on site 1 will now be a minimum of 2.53m from their side boundary, rather than 5.10m as originally shown. I would consider that in view of the revised house type, the distance to the property to the west, their long rear garden and screening along the western boundary that this reorientation of house no.1 will not adversely impact on that property.
- 7.2.5. If the Board decide to permit, I would recommend, that the boundary hedge be retained and augmented along the western boundary of the site, and that a landscaping plan be submitted. This should include details of boundary treatment and retention of trees along the eastern boundary. In addition, I note the concerns of the property to the northeast and would recommend that it be conditioned that the closest point of the proposed house on site no.3 be sited a minimum of 1m away from the rear boundary wall of the house to the north-east of the site. I would also consider that the omission of the first floor windows in house no.1 will lesson the impact of overlooking on the housing to the east.

### **7.3. Boundary Treatment at the Rear**

- 7.3.1. The issue of the difference in levels is noticeable onsite. The subject site is set c.1m lower than that of the rear gardens of 57 and 58 Willow Grove. They are concerned about overlooking, loss of privacy and subsidence. The Third Party provides that the rear boundary of the site, which abuts their rear boundary consists of an existing boundary wall approx. 2.6m high with additional clad sheeting attached to it (erected by themselves c. 20 years ago) giving a total height of approx. 3.9m and continuing with 3.9 metres wall for the remainder of its length. They are concerned that in view of the difference in levels that the proposed 2m wall will only appear 1m in height

along the boundary of their rear garden area and will lead to loss of privacy and overlooking. They ask that if the Board decide to permit that it be conditioned that the existing southern rear boundary be retained. The First Party does not object to this subject to some alterations.

7.3.2. However, the existing wall/clad sheeting along the southern boundary of the site, appears very unsightly, in particular for future residents of the subject site. Also, I would consider the 3.9m height to be excessive. In view of the difference in levels, I would consider that a 2m high wall along the southern boundary is not adequate relevant to the adjoining properties in Willow Grove. I would recommend that in view of the circumstances, if the Board decides to permit that it be conditioned that the existing southern boundary be removed and replaced with a 3m high block wall, that is capped and rendered.

7.3.3. It must be noted that the First Party has said that the issue of encroachment onto third party lands will not occur. The issue of encroachment is a civil matter, and the applicant is advised that in the event of encroachment, 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.

#### 7.4. **Access issues**

7.4.1. Concerns have been raised in the Observations made about the proposed access to the site, by the residents on either side with frontage to the Carrick Road. It is noted that the Planner's Report provides that matters relative to Roads and Traffic have been addressed at the outline application stage. They have regard to Site Layout

Plan submitted with Reg.Ref. 17/597 which indicates visibility splays and set back of the proposed entrance. A new entrance to the site was granted to the Carrick Road, separate to the entrance to the property to the north-east and to the property to the west. The Planner's Report provided that all boundary walls etc are now located behind the visibility line. Also, that Condition no.7 of the Outline Permission will be applied in the event of a positive decision.

- 7.4.2. It is noted that the location of the proposed access or the internal roads layout to include the roundabout has not been altered in the plans submitted with the Permission Consequent. Therefore, it is considered that this issue has been addressed as per the plans submitted and Condition no.7 of the Outline Permission. If the Board decides to permit it is recommended that a condition be included to comply with the Outline Permission.
- 7.4.3. On site I noted that the Site Notice was on the gate to the eastern (current) access to the site, which was also the access used to facilitate the site visit. It is not shown included within the red line boundary on the plans now submitted or with the plans in the outline permission. If the Board decide to permit, I would, recommend, that it be conditioned that the permitted entrance be the sole entrance to serve the proposed development site.
- 7.4.4. It is noted that the Carrickmacross Road is a fast busy Road and that there is no parking along the frontage. Therefore, it is important that all parking associated with the development including during construction phase be on site. If the Board decide to permit, I would recommend, that a condition regarding Construction Management be included.

## **7.5. Screening for Appropriate Assessment**

- 7.5.1. Having regard to nature and scale of the development proposed in a fully serviced and zoned residential area and the nature of the receiving environment and the distance and lack of connections to the nearest European sites: Dundalk Bay SPA (site code: 004026) and SAC (site code: 000455), 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

- 8.1. I recommend that Permission Consequent be granted subject to the conditions below.

## 9.0 Reasons and Considerations

Having regard to planning register reference number 17/597, wherein outline permission was granted for a development to consist of 3no. dwelling houses on this site, to the residential land use zoning in the Dundalk and Environs Development Plan 2009-2015 (as extended), to the pattern of development in the vicinity, and to the scale, form and layout of the proposed development it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area including the amenities of property in the vicinity, would be acceptable in terms of scale and form, and would be acceptable in terms of pedestrian and traffic safety. The proposed development, therefore, would be in accordance with the proper planning and sustainable development of the area

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 8th day of March 2021 and by the further plans and particulars received by An Bord Pleanála on the 13th day of May, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. All relevant conditions attached to the grant of outline planning permission associated with the subject site (planning register reference number 17/597 refers), shall be strictly adhered to, save for changes granted under the current application.

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

3. The three number dwelling houses hereby permitted, shall each be used and occupied solely as single residential units, and shall not be sold, let or otherwise transferred or conveyed, save as single dwelling units.

**Reason:** To restrict the use of the dwellings and in the interests of residential amenity.

4. Details of the materials, colours and textures of all the external finishes to the proposed house shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

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

5. The proposed development shall be amended as follows:

- a) The house on Site number 3 shall be sited so that at its closest it is set back a minimum of 1 metre from the rear boundary wall of the house to the north-east,
- b) Details of proposed boundary treatments at the perimeter of and within the sites, including heights, materials and finishes, shall be submitted,
- c) The existing wall/cladding along the southern site boundary with the properties in Willow Grove shall be removed and replaced along the entire length of the southern boundary of the site with a 3 metre high block wall, to be rendered and capped.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

- 6 a) The vehicular access and internal access road network serving the proposed development, including turning circle, parking areas, footpaths and kerbs,

shall comply with the detailed standards of the planning authority for such works.

- b) This proposed development shall be served only by the permitted vehicular access. The access to the east of the site boundary shall not be used as a vehicular access to the site.
- c) Surface water from the site shall not be permitted to drain onto the adjoining public road.

**Reason:** In the interest of amenity and road safety.

- 7. The trees and hedgerows along the eastern and western site boundaries shall be retained and augmented and prior to the commencement of development a comprehensive boundary treatment and landscaping scheme for the site, to include a plan for the protection of existing trees during construction, shall be submitted to and agreed in writing with the planning authority.

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

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

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

- 9. The applicant/developer shall enter into water and/or waste water connection agreement(s) with Irish Water prior to the commencement of this development.

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

- 10. All public services to the proposed development, including electrical, telephone cables and associated equipment shall be located underground throughout the entire site.

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

- 11. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to

commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

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

12. Proposals for a house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interest of urban legibility

13. Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

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

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

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

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

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

16. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

---

Angela Brereton  
Planning Inspector

11<sup>th</sup> of August 2021