



An
Bord
Pleanála

Inspector's Report

ABP-310479-21

Development	Retention of work as completed to date, 13 houses complete to sub floor level and full planning permission for construction of 13 houses. Parent planning P.04.1764
Location	Corryard Dristernan & Drumcoora, Drumshanbo, Co. Leitrim
Planning Authority	Leitrim County Council
Planning Authority Reg. Ref.	20212
Applicant(s)	Tommy Mulvey.
Type of Application	Retention and Permission.
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Lynda and Robert Curr. Kelly Hamilton.
Observer(s)	N/A.
Date of Site Inspection	10 th of March 2022.

Inspector

Stephanie Farrington

1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of 2.153ha, is located on the southern edge of Drumshambo village in the townlands of Corryard and Dristernan. The site comprises the unfinished element of a larger housing development for 29 residential units as permitted under PA Ref 04/1764, ABP Ref: PL12.213478. The site is currently occupied by the foundations of 13 no. houses, is overgrown and currently enclosed by a timber rail fence.
- 1.2. Access to the development is provided via the existing Allenbrook Estate to the south. The appeal site extends to include the existing pedestrian access to the site from Hilly Road (LP 3384/0) to the east. The site is adjoined by low density detached housing to the south and east.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - (a) Retain the works as completed to date including 13 no. houses complete to sub floor level
 - (b) Full planning permission for to complete the construction of 13 domestic dwellings, sites services, site entrance and all ancillary works.
- 2.2. The following mix of units are proposed:
 - Nos. 16,17,19,20,21 and 22 – 3 storey dwellings with a floor area of 152sq.m.
 - No. 15 is a 2 storey dwelling with a floor area of 100 sq.m.
 - Nos. 27 and 28 are 3 storey with a floor area of 202.7 sq.m.
 - Nos. 18 and 23 are 3 storey with a floor area of 157.4sq.m.

3.0 Planning Authority Decision

3.1. Decision

Leitrim County Council issued a notification of decision to grant permission for the development subject to 18 no. conditions. The following conditions are of note:

- Condition no. 2: The access onto the Hilly Road, shall remain as a pedestrian access only and shall not be opened for any vehicular movement, either temporary or permanent. The access shall be fully landscaped, details of which shall be agreed with the Planning Authority, prior to the commencement of development.
- Condition no. 3: Development Contribution
- Condition no. 4: Bond
- Condition no. 15: Ongoing maintenance and repair of infrastructure.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planners Report (01/02/2021)

- The design of the dwellings conforms with the existing houses on the circuit and the layout is generally in accordance with that permitted under Ref 04/1764 (extension of duration Ref 11/110).
- A request for further information is recommended in relation to the following:
 - Part V proposals, details of gradient and road levels, street lighting proposals, foul sewer connection, surface water and water distribution details, landscaping, private open space and boundary treatment details and revised drawings which address discrepancies in the application drawings.

Planners Report on Further Information (19/05/2021)

- The applicant has submitted a satisfactory response to the request for further information.
- The report refers to the submissions in the relation to the possible vehicular access onto Hilly Road. It is stated that this should be retained for pedestrian access only.

- Reference is made to the unsolicited further information submitted by the applicant which outlines that access to the development shall be provided via the Allenbrook estate.
- There is a registered right of way across the property which is not impeded by the proposal.
- A grant of permission is recommended.

3.2.2. Other Technical Reports

South Leitrim Roads (21/01/2021)

- No objection.

Water Services Department (15/01/2021)

- Further information recommended.

Water Services (17/12/20)

- No objection.

Enforcement Officer (04/01/2021)

- Further information requested.

Housing Delivery Unit (09/12/20)

- Further information recommended in relation to Part V proposals.

Water Service Department (10/05/2021)

- No objection is raised subject to condition.

Enforcement Officer (10/05/2021)

- Vehicular access via the existing pedestrian route linking to Hilly Road should be refused.
- Recommends a grant of permission subject to condition.

Housing Delivery Unit (28/04/2021)

- The applicant has submitted a compliant application in relation to Part V.

Chief Fire Officer (28/05/2021)

- No objection.

3.3. Prescribed Bodies

- None.

3.4. Third Party Observations

Observations on the application were received during the initial statutory consultation period and on receipt of the applicant's FI response. The following provides a summary of the relevant points raised.

- Impact on Residential Amenity –Concerns are raised in relation to the proposed increased height of units and additional bedrooms. Noise concerns, lack of amenity space.
- The development is not in accordance with the parent permission. Public open space has been omitted and the layout includes a through road in place of the previously permitted cul de sac.
- Traffic Impact and proposed access arrangements. Concerns are raised in relation to traffic impact the proposed vehicular access and the internal road layout which represents a deviation from what was previously permitted.
- Construction Phase Impacts.
- Insufficient capacity within the sewerage system.
- Non-compliance with the conditions attached to the parent permission.
- Validity Concerns – lack of reference to the new road and footpaths within the public notices.
- Ownership.

4.0 Planning History

PA Ref: 11/1110: Planning permission granted in July 2011 for the development permitted under PA Ref: 04/1764 for a duration of 5 years.

PA Ref: 04/1764, ABP Ref: PL12.213478: Planning permission granted by An Bord Pleanala in May 2006 for the construction of 29 no. dwellings subject to 12 no. conditions. The following conditions are of note:

- Condition 2: Prior to the commencement of development revised plans and details shall be submitted to the planning authority for written agreement showing: (1) Pedestrian and cyclist access only from county road LP 3384/0. (2) Retention of the existing stream and mature ash trees along this access route. (3) Revised boundary wall treatment adjacent to public open spaces and roads of sites 1, 13, 18, 28 and 29 to include the use of stone consistent with that to be used on the dwellings.

Reason: In the interest of visual and residential amenity.

- Condition 3: Prior to the commencement of construction, details of the materials, colours and textures of all the external finishes and surfaces (including samples of stone to be used on elevations, paving, kerbs, footpaths) to the proposed development shall be submitted to the planning authority for written agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

Larger Landholding

PA Ref: 06/1538: Planning permission refused in April 2007 for the construction of a creche within the wider landholding. The reasons for refusal related to impact on residential amenity, traffic impact, siting and design.

5.0 Policy Context

5.1. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)

- 5.1.1. The Guidelines define a smaller town or village as having a population ranging from 400 to 5,000 persons. In these locations, Section 6.3(a) and (b) state that development should be plan-led and that new development should contribute to a compact urban form.
- 5.1.2. Section 6.3(e) advises that the scale of new residential schemes in small towns and villages 'should be in proportion to the pattern and grain of existing development' and suggests that the development of these settlements may be controlled, for example

that no single proposal should increase the housing stock by more than 10-15% or that, for villages under 400 in population, individual housing schemes should exceed 10-12 units.

5.2. National Planning Framework

- 5.2.1. National Policy Objective 6: 'Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.'
- 5.2.2. 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.'

5.3. Leitrim County Development Plan 2015-2021

- 5.3.1. The appeal site is located within the administrative boundary of Leitrim County Council. The operative plan for the area is the Leitrim County Development Plan 2015-2021 (as varied and extended).
- 5.3.2. Drumshanbo is designated as a Category Tier 2B town within the settlement hierarchy set out within the County Development Plan. The Development Plan sets out the following guidance for Tier 2B centres:

"Tier 2 Centres are generally those with a population over 850 and have a range of commercial and community services and facilities. They include the 2A Key Towns of Manorhamilton and Ballinamore and the 2B Support Towns of Dromahair, Drumshanbo, Mohill, and Kinlough".
- 5.3.3. Section 4.2.1 of the LCDP outlines that the social and economic infrastructure of the County has been under threat from population decline. Policy 6 of the LCDP outlines that: *"It is the policy of the Council to promote the viability of these facilities by encouraging new residential development to locate within the development envelope of existing towns, villages and other centres where these services are available".*

Zoning

- 5.3.4. The site is zoned for “Primarily Residential (Undeveloped)” purposes within the Leitrim County Development Plan. Dwelling is listed as a use which is “acceptable in principle” on lands zoned for primarily residential purposes. The Development Plan outlines the following guidance in respect of this zoning objective:

“Residential development will be encouraged in town centres and lands zoned ‘Primarily Residential’. The Council seeks to encourage high-quality residential schemes with convenient and safe access to local services and a safe and pleasant local environment. The Council will strive towards the ideal of mixed residential neighbourhoods, where people of different social and economic backgrounds and of different ages can live in proximity and harmony.

Larger areas of vacant lands and unfinished residential development, located within areas designated as ‘Primarily Residential’, have been identified as ‘Primarily Residential (undeveloped)’. Areas that are, in the main, developed are identified as ‘Primarily Residential (developed)’. (Refer to Volume 3, Appendix E, Book of Maps).

It is envisaged that the bulk of residential development will take place on lands zoned ‘Primarily Residential’. Other development that does not negatively impact on the residential use of neighbouring lands will also be open for consideration in this zone.

Certain institutional and community uses, small-scale enterprises and shops can enliven residential areas and ensure local services are easily available. The key to their acceptability will be their impact on neighbouring residential amenity.

Areas zoned Primarily Residential that have been largely undeveloped are indicated as such in Appendix E, Book of Maps. These areas include vacant lands and certain areas where development has not been substantially completed”.

Justification Test

- 5.3.5. Section 4.2.2.9 of the County Development Plan relates to a Justification Test. This outlines that a justification test in terms of the market demand for new residential development will generally be required in the case of all new applications for residential schemes (two or more dwellings) pending a narrowing of the supply and demand of residential units in those centres where there remains a wide divergence.

Unfinished/Unoccupied Estates

5.3.6. Section 4.2.2.10 of the LCDP relates to unfinished/unoccupied estates and commercial property within the County. Policy 9 is of relevance.

- Policy 9: It is the policy of the Council to operate a proactive approach and to work with relevant parties towards achieving a sustainable resolution to the difficulties associated with unfinished/unoccupied estates and commercial property within the County.

Development Management

5.3.7. Chapter 5 of the Development Plan sets out Development Management Standards. Section 5.3 relates to residential development within towns and villages and outlines the following:

“Development proposals in the towns and villages of the County should be designed to respect the scale, character and finishes of the local built environment. Proposals located on the edges of built-up areas should be designed to integrate with the existing urban fabric and not to create sprawling boundaries to the towns and villages. Infill proposals will be evaluated to ensure that detailed design elements harmonise with adjoining buildings and that overdevelopment of restricted sites does not result”.

- Density

5.3.8. Section 5.3.3 of the Leitrim County Development Plan relates to density. This outlines that proposals should provide rationale for the density levels proposed relative to existing or proposed infrastructure and the surrounding town or village character and environment. Proposed development should also have regard to the density of adjoining development, the nature of the adjoining development and site characteristics, the availability of services and the particular layout proposed.

5.3.9. Section 5.3.3 also lists other considerations for developments including appropriate provision for open spaces, adequate privacy for each household, a design that integrates successfully into the existing environment and adequate car parking facilities. Higher residential densities may be considered in brownfield sites close to town/village centres.

- Access onto Public Roads and Sight Lines

5.3.10. Section 5.5.8 of the Development Plan relates to Access onto Public Roads and Sight Lines. This outlines that *“All developments providing for access onto public roads must show that the access proposed will not create a traffic hazard nor interfere with the free-flow of traffic along such roads. Generally, sight lines should be in accordance with either and/or the NRA TD41-42/11 Geometric Design of Major/Minor Priority Junctions and Vehicular Access to National Roads plus NRA TD9/12 Road Link Design published by the National Roads Authority. Each case will be assessed on its own merits and the operational speeds on the roads in question will also be taken into account”*.

5.3.11. Section 3.02 relates to Residential Design Standards. The following standards are of relevance:

- Normally, minimum private open space of 55 m. sq. will be required for all houses. The standards to be applied for private open space provision per bed-space are 16 sq. m. for houses and 10 sq. m. for apartments and flats. (Thus a standard 3 bedroom house, with one single bedroom and two double bedrooms, would require private open space of not less than 80 m. sq.).
- In addition, a minimum of 22m will normally be required between directly opposing rear first floor windows of habitable rooms.
- A minimum of 2.5m should be provided between dwellings to allow access for maintenance. Where buildings are greater than two storeys this dimension may need to be greater.
- Generally public open space in new residential development, in excess of private space attached to dwellings, shall be provided at the rate of 12 sq. m. per bed-space for houses and 10 sq. m. per bed-space for apartments. Notwithstanding the above a minimum of 15% of the site area will normally be required as public open space.
- Table 3.1 sets out car parking standards. A minimum parking requirement of 2 spaces per dwelling is set out.

5.4. Natural Heritage Designations

5.4.1. The subject site is not located within or adjacent to any designated European Site. The closest designated sites to the appeal site include:

- Carrickaport Lough PNHA - c. 2km
- Lough Allen, South End and Parts PNHA - c. 3km
- Cuilcagh - Anierin Uplands SAC and PNHA – c. 5 km

5.5. EIA Screening

5.5.1. An Environmental Impact Assessment Screening report was not submitted with the application. The proposed development falls within the categories of 'Infrastructural Projects', under Schedule 5, Part 2 of the Planning and Development Regulations 2001-2020, where mandatory EIA is required in the following circumstances:

10(b)

- (i) Construction of more than 500 dwelling units.
- (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)

5.5.2. The proposal is for the retention of existing foundations on site and completion of 13 no. residential units on a site of 2.15ha. The proposed development falls below the development threshold and mandatory EIA is therefore not required.

5.5.3. I have given consideration to whether sub-threshold EIA is required. The site is located within an unfinished housing estate within the urban footprint of Drumshanbo. The completion of the development will not have an adverse impact in environmental terms on surrounding land uses. The site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any designated Natura 2000 site as detailed further in Section 7 of this report.

5.5.4. The proposed development, which comprises completion of an existing unfinished housing estate, would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Leitrim County Council, upon which its effects would be marginal.

5.5.5. Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site within the existing built-up urban area of Drumshanbo, which is served by public infrastructure, and the existing pattern of residential development in the vicinity,
- The location of the site outside of any sensitive location specified in Article 109 of the Planning and Development Regulations 2001 (as amended),
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

5.5.6. I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination a sub-threshold environmental impact assessment report for the proposed development was not necessary.

6.0 The Appeal

6.1. Grounds of Appeal

2 no. third party appeals have been submitted in respect of the notification of decision of Leitrim County Council to grant permission for the development on behalf of:

- Kelly Hamilton, 14 Allenbrook
- Lynda and Robert Curr, 24 Allenbrook

Both appeals have been prepared by Liam Madden and have a similar content. The following provides a summary of the grounds of appeal.

- Reference is made to the planning history of the appeal site and the abandoned nature of the parent permission.
- Concerns are raised in relation to the lack of detail of the omitted vehicular entrance. The appellant is at a legal disadvantage in the absence of a drawing. The appeal refers to unsolicited further information submitted on the 11th of May 2021 and asserts that members of the public were not privy to this.
- The appeal refers to the conditions attached to the permission. It is stated that Condition 2 is attached without details submitted, Condition no. 11 would impact on the scheme and Condition no. 15 is in direct conflict with Conditions 3 and 4.
- Concerns are raised in relation to the lack of a traffic and transport assessment.
- The ownership of the site is questioned.
- The validity of the application is questioned.
- The appellant outlines that planning permission should be refused for the development on grounds including the following:
 - The proposed road layout is potentially dangerous, lack of a Traffic and Transport Statement.

- Lack of detail regarding the impact of the proposal on easements through the site.
- The sewage pumping station is defective. In the absence of foul drainage, the proposal is premature.
- The applicant has failed to demonstrate sufficient legal interest in the lands.
- In the instance of a grant of permission, the appellant requests that Conditions should not be in conflict with the parent permission.
- The cul de sac access arrangement for the internal road should be reinstated in accordance with the parent permission.

6.2. Applicant Response

Davitt Plan and Design provided a response to the grounds of appeal on behalf of the applicant. The following provides a summary of the points raised.

- A summary of the planning history pertaining to the site is provided together with an overview of the relevant provisions of the Leitrim County Development Plan 2015-2021. The proposed development seeks to complete an unfinished housing estate and construct 13 new housing units.
- The existing access lane from Hilly Road is pedestrian access only. The applicant has no intention to create a second vehicular entrance.
- The applicant purchased the site and is the current legal owner of the site.
- The proposal complies with all Development Plan criteria.
- The application relates to the completion of an unfinished housing estate. The completion of the development will enhance the amenity of all adjacent homeowners.
- The proposed dwellings will provide local people with an opportunity to purchase a home in the locality.

6.3. Planning Authority Response

Leitrim County Council provided a response to third party appeal. The following provides a summary of the issues raised.

Validity of Application

- Errors and inconsistencies in the application drawings were raised by the planning authority during the course of assessment of the application.
- The planning authority response confirms that an email was received from the applicant by way of unsolicited further information but this just clarified that the pedestrian Hilly Road route shall remain as pedestrian only. The location of the route did not change and revised drawings were not required to illustrate same.

Road Layout

- The application was referred to both the South Leitrim District Engineer and the Road Design for comment on the proposed layout. No response was received from Road Design and the District Engineer did not raise objection.
- The Planning Authority considered that no specific traffic issues arose in this case having regard to the location of the site in the defined settlement zone of Drumshambo. Traffic Safety Audits would only be required in instances where specific traffic hazards exist and where significant numbers of additional traffic movements are anticipated.

Title issue and right of way registered easement

- The Planning Authority note that the applicant stated in their application that they were the owners of the lands. The issue of ownership was only raised by 3rd parties following the submission of the applicant's response to the request for further information.
- The applicant submitted a letter to the Planning Authority from his solicitor confirming ownership. Furthermore Section 34(13) of the Planning and Development Act states that a person shall not be entitled solely by reason of a permission under this section to carry out any development.

Infrastructure and Foul Drainage Services

- The application was referred to the Taking in Charge Officer and the Water Services Department during the course of the application. No objection was made.
- Reference is made to the requirements of Condition no. 15 and it is stated that the onus is on the developer for ongoing maintenance and repair of infrastructure on the development.

Conclusion

- The Planning Authority is satisfied that it has assessed the proposed development in the most comprehensive manner.
- Having regard to the location of the site on lands which are zoned suitable for “Primarily Residential” purposes in the current County Development Plan 2015-2021, and the planning history of the site, the provision of residential development on the site is considered acceptable in principle.
- The proposed development is considered to be appropriate, having regard to its location in the serviced town of Drumshambo. It is considered that the proposal is in accordance with the provisions of the Leitrim County Development Plan 2015-2021.
- The planning authority respectfully recommends An Bord Pleanála upholds the decision of LCC to grant permission for the development.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Proposal
- Layout, Design and Height
- Impact on Residential Amenity
- Traffic and Transportation

- Site Services
- Other Issues
- Appropriate Assessment

7.2. Principle of Proposal

- 7.2.1. The appeal site comprises a brownfield site within an existing unfinished residential estate at Allenbrook, Drumshanbo. The site is located within the urban footprint Drumshanbo and primarily zoned for “Primarily Residential” purposes within the Leitrim County Development Plan 2015-2021. Dwelling is listed as a use which is “acceptable in principle” on lands zoned for primarily residential purposes.
- 7.2.2. The development seeks to construct 13 no. houses on existing foundations previously approved under PA Ref 04/1764, as extended under PA Ref 11/110. I consider that the principle of the completion of an unfinished housing estate on a zoned and serviced brownfield site within Drumshanbo is acceptable in principle and will support national and local policy objectives for compact growth. The proposed development supports the sequential approach to the delivery of housing. I consider that the principle of the proposal is acceptable subject to layout and residential amenity considerations.

7.3. Layout, Design and Height

- 7.3.1. The proposed development seeks to finish out the estate as permitted under PA Ref: 04/1764, ABP Ref: PL12.213478. The application documentation outlines that development reflects the layout, form and design of houses constructed under that permission. On review of the proposed and permitted site layout plans I confirm that the alignment of houses reflects the previously permitted layout and have no objection to the retention of foundations and completion of the housing units in this regard.
- 7.3.2. I note that the proposal includes some deviations from the previously permitted layout. (I refer the Board to Drawing no. 04032-PA-01 Proposed Site Layout Plan dated 24/05/2005 of PL12.213478 and Drawing no. 20025-01 Site Layout Plan). Of significance, the proposal omits an area of previously approved public open space associated with the development and an internal access road is provided in its place. A through internal access road is proposed in lieu of the previously permitted cul de

sac arrangement and private open space associated with unit no. 23 extends to include part of the public open space area. A number of submissions on the application raise concern in relation to the revised road layout and omission of public open space on grounds of impact on residential amenity and gradient changes within the site.

- 7.3.3. I note that the proposed access arrangements and internal road network represent a deviation from that previously permitted on site and in my opinion are overengineered for the nature and scale of development. I also see no justification for the provision of a through internal road in lieu of the permitted cul de sac layout and do not consider the omission of public open space to be acceptable.
- 7.3.4. I furthermore do not consider that there is a requirement for an independent access to the site from Hilly Road and recommend that this should be restricted to pedestrian access only in accordance with the conditions attached to the parent permission pertaining to the site. I consider that these points can be addressed by means of condition and recommend that revised plans are submitted for written agreement of the planning authority in the instance that the Board is minded to grant permission for the development.
- 7.3.5. Some amendments are made to the height of the proposed units from that previously permitted to accommodate second floor accommodation (c.0.5m increase). I have no objection to the proposed increase in height of the units. The proposed façade materials of render and stone reflect those previously permitted and established within the estate and the proposed boundary treatment reflects that established within the estate. The Proposed Site Layout Plan (Drawing no. 20025-01) illustrates a stone boundary treatment for plots no. 18 (north boundary), no. 23 (east boundary) and no. 28 (south boundary) in accordance with the requirements of the parent permission pertaining to the development.
- 7.3.6. In conclusion, while I have no objection to the completion of the previously permitted development on site, I consider that the proposed revisions to the access arrangements and omission of public open space is contrary to Development Plan policy. I consider that this could be addressed via condition seeking a revised site layout in the instance that the Board is minded to grant permission for the development.

7.4. Impact on Residential Amenity

- 7.4.1. The siting of the proposed residential units on site is in accordance with the parent permission. Separation distance between units remain as permitted. While there is an increase in the height of a number of the units from that previously permitted (0.5m) I consider that the increase is marginal and will not result in disamenity impact on adjacent residential properties by means of overlooking or overshadowing.
- 7.4.2. I consider that the proposed reduction in public open space and revisions to the internal road layout within the development would impact on the residential amenity of existing and future residents of the development and as previously detailed recommend that this should be addressed by means of revised drawings. I note that the proposed boundary associated with unit no. 23 extends to include the area of previously permitted public open space area. A revised boundary treatment should be provided for this unit.
- 7.4.3. On an overall basis, I consider that the development of the site would enhance the residential amenity of the area particularly for existing residents in the immediate vicinity of the site where the unfinished nature of the development is most evident. The proposal will complete the estate, upgrade the external road network, complete the internal road network and provide a more appropriate interface with existing properties.

7.5. Traffic and Transportation

- 7.5.1. The primary grounds of appeal relate to the proposed access arrangements to the site. The appeals outline that the proposed road layout is confused and potentially dangerous and reference is made to the lack of details for the existing access from Hilly Road.
- 7.5.2. The application drawings illustrate vehicular access to the site from the existing pedestrian access to the site from Hilly Road. However, I note that as unsolicited further information the applicant provided clarification that this would be restricted to pedestrian and cycling access only and the main vehicular access to the development would be provided via the Allenbrook estate.
- 7.5.3. I refer to the requirements of Condition no. 2 of the parent permission pertaining to the site (ABP Ref: PL12.213478) which outlines that the access from Hilly Road will

be restricted to pedestrian and cycle access only. The rationale for the imposition of this condition was on grounds of visual and residential amenity. I have no objection to the principle of the proposed access arrangements from Allenbrook and consider that further detail on the pedestrian access from Hilly Road can be addressed via condition.

- 7.5.4. The appeal outlines that insufficient detail has been submitted in respect of the proposals for the access from Hilly Road. I refer to the requirements of Condition no. 2 of LCC's notification of decision to grant permission for the development which outlines that "the access onto the Hilly Road, shall remain as a pedestrian access only" and landscaping proposals for the access shall be submitted for written agreement to the planning authority. While I acknowledge that no revised details have been provided, I consider that such details can be subject to written agreement with the planning authority and addressed by means of condition. I note that at present the existing access is restricted to pedestrian use only and note that the condition restricting the use of the access reflects the condition attached to the parent permission pertaining to the development.
- 7.5.5. As earlier detailed, I note that there are deviations to the format of the internal access road from the parent permission. A through road is provided in place of the previously permitted cul de sac arrangement. Concerns in relation to the internal road network were raised within the submissions on the application on grounds of the gradient of the road and impact on residential amenity. As detailed earlier in this report, I also see no justification for the provision of a through perimeter internal road in lieu of the permitted cul de sac layout and do not consider the omission of public open space to be acceptable. I consider that these points can be addressed by means of condition and recommend that revised plans are submitted for written agreement of the planning authority in the instance that the Board is minded to grant permission for the development.
- 7.5.6. The appeal raises concern in relation to the scope of the application and the lack of a traffic assessment and road safety audit to inform the development. In this regard, I note that the proposal relates to the continuation of an unfinished housing estate within Drumshambo. The principle of the development and proposed access arrangements has therefore been established and having regard to the small scale of the development I do not consider that traffic impact concerns arise.

7.5.7. Having regard to the limited scale of the development, the proposed parking provision and the location of the site I do not consider that the development constitutes a scale or format of development which would generate substantial traffic movements on the adjoining road network. I furthermore note that Leitrim County Council have raised no objection in principle to the operation of the existing junction.

7.6. **Site Services**

7.6.1. The proposal seeks to connect to the public water and public sewer mains. The appeal outlines that the existing sewage pumping station is defective and states that in the absence of foul drainage, the proposal is premature. I note that the capacity of the existing pumping station is also raised within a number of submissions on the application.

7.6.2. The application was referred to the Taking in Charge Officer and the Water Services Department during the course of the application. I note that Leitrim County Council have provided no objection to the principle of the proposed site services. The planner's report which informs the decision of the Council to grant permission for the development outlines that LCC has taking in charge the pump station in Allenbrook and the station has been subject to improvement works.

7.6.3. I also refer to the requirements of Condition no. 11 of the notification of decision to grant permission for the development which relates to the sequencing of development on site and the provision of necessary infrastructure in advance of commencement of house construction. I consider that any necessary upgrades to the pumping system should be provided in advance of completion of houses within the estate.

7.7. **Other Issues**

Ownership and Right of Way

7.7.1. Issues of site ownership and easements through the site are raised within the appeal. The appeal outlines that It is stated that the applicant is not the registered owner of the site and the application should be deemed invalid on this basis. I refer to the correspondence from Beau Park Law Solicitors which confirms that the applicant Thomas Mulvey is the legal owner of the property.

- 7.7.2. Notwithstanding the above, I am of the view that the issues raised in the appeal relating to ownership and consent are civil matters and are not matters that the Board can consider. In this regard, Section 34 (13) of the Planning and Development Act states that, 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'.
- 7.7.3. Section 5.13 of the Development Management Guidelines (DEHLG, 2007) provides guidance on this matter, stating that *'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'*. The guidelines state that where in making an application, a person asserts that he or she is the owner of the land or structure in question, and there is nothing to cast doubt on this, the planning authority is not required to inquire further into the matter. As stated in the planning officer's report, the granting of planning permission does not entitle any party to undertake works on lands outside their ownership.
- 7.7.4. In conclusion, I am of the view that the issues raised in the appeal are civil matters that fall outside of the Planning and Development Acts and that the Board is not empowered to make a determination in relation to such matters. It is not the Board's role to determine legal title or entitlement to any given lands.

Compliance with Conditions

- 7.7.5. The appeal refers to a number of conditions attached to the notification of decision to grant permission for the development and the following is noted in this regard:
- Condition no. 2 is attached without details submitted,
 - Condition no. 11 would impact on the scheme,
 - Condition no. 15 is in direct conflict with Conditions 3 and 4.
- 7.7.6. I reviewed the contents of the conditions and note the following in this regard:
- Condition no. 2 of the Council's decision restricts the existing pedestrian access to the site from Hilly Road to pedestrian access only. The condition reflects the condition attached to the parent permission pertaining to the development. I consider that the details can be agreed with the planning authority prior to the commencement of development.

- Condition no. 11 relates to the provision of infrastructural works in advance of house construction. This relates to the sequencing of development on site and I consider that such a condition is appropriate on residential amenity grounds.
- Condition nos. 3 and 4 relate to Development Charges and Bonds attached to the permission. A Bond is attached to ensure the completion of the development. Condition no. 15 relates to ongoing maintenance and repair of the development. I do not consider that these conditions are in direct conflict with each other.

7.8. Appropriate Assessment

- 7.8.1. An Appropriate Assessment Screening Report prepared by F. Davitt Planning and Design Engineers is submitted in conjunction with the application. This identifies the following Natura 2000 sites within 15km of the appeal site:
- Cuilcagh - Anierin Uplands SAC (Site Code 000584) – c. 5km
 - Lough Arrow SAC (Site Code 001673) – 12km
 - Lough Arrow SPA (Site Code 004050) – 12km
- 7.8.2. The applicant's Screening Statement outlines that given site separation distances to Natura 2000 sites there can be no implication to any sites. The assessment concludes that: *"The screening report has found that no Natura 2000 sites will be detrimentally affected by the development. Therefore, in accordance with the methodological guidance on the provision of Article 6(3) and 6(4) of the Habitats Directive 92/43/EEC it is concluded that the proposed development does not require any further assessment to demonstrate compliance with the Directive"*.
- 7.8.3. The nearest Natura 2000 site from the development is the Cuilcagh - Anierin Uplands SAC (Site Code 000584) which is located c. 5km north-east of the development site. Lough Arrow SAC (Site Code 001673) and Lough Arrow SPA (Site Code 004050) are also located within 15km of the appeal site. The site development will not be carried out within any designated SAC or SPA site, lead to habitat loss, land-take or fragmentation of habitats. Furthermore, there will be no interference with boundaries of any designated area.
- 7.8.4. In the absence of any pathway to the above designated site and having regard to the nature of the development, which is an infill development on a brownfield site, its

location in a serviced urban area, and the separation distance to any European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

- 7.8.5. As there are no impacts on designated Natura 2000 sites arising as a result of this development, there is no potential for cumulative impacts. There are no likely impacts arising from the proposed development on Natura 2000 sites and therefore cumulative impacts with other projects will not occur.
- 7.8.6. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans and projects would not be likely to give rise to significant effects on European sites Cuilcagh - Anierin Uplands SAC (Site Code 000584), Lough Arrow SAC (Site Code 001673) and Lough Arrow SPA (Site Code 004050) or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is therefore not required.

8.0 Recommendation

- 8.1. I recommend that permission is granted subject to conditions.

9.0 Reasons and Considerations

Having regard to the location of the site on a brownfield site within an existing residential development close to Drumshanbo town centre, the residential zoning objective for the site, national and local policy objectives which support the redevelopment of brownfield/infill sites, the pattern of development in the area and the nature and scale of the proposed development it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the residential or visual amenities of the area and would be acceptable in terms of the safety and convenience of pedestrians and road users and would not constitute a traffic hazard. The proposed development

would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by further plans and particulars received on the 8th of April 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Prior to the commencement of development revised plans and details shall be submitted to the planning authority for written agreement showing:</p> <p>(1) The existing pedestrian access to the site from the Hilly Road shall be landscaped and restricted to pedestrian and cyclist access only.</p> <p>(2) Retention of the existing stream and mature ash trees along this access route.</p> <p>(3) Revised proposals for the access road and provision of public open space in accordance PA Ref: 04/1764, ABP Ref: PL12.213478.</p> <p>(4) Revised boundary wall treatment and private open space for unit no. 23.</p> <p>Reason: In the interest of road safety and residential amenity.</p>
3.	<p>Prior to the commencement of development details of the materials, colours and textures of all the external finishes to the proposed buildings, surface materials and public realm finishes shall be submitted for written agreement of the planning authority.</p> <p>Reason: In the interest of visual amenity.</p>

4.	<p>The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To ensure a satisfactory completion and maintenance of the development in the interests of residential amenity.</p>
5.	<p>The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall comply in all respects with the standards set out in the Design Manual for Urban Roads and Streets (DMURS).</p> <p>Reason: In the interests of pedestrian and traffic safety.</p>
6.	<p>Public lighting shall be provided in accordance with a public lighting scheme which shall be submitted to and agreed in writing with the planning authority prior to commencement of the development.</p> <p>Reason: In the interests of amenity and public safety.</p>
7.	<p>The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development.</p> <p>Reason: To ensure the timely provision of services, for the benefit of existing residents and the occupants of the proposed dwellings.</p>
8.	<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 and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.</p> <p>Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
9.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located</p>

	<p>underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interests of visual and residential amenity.</p>
10.	<p>Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
11.	<p>The applicant shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.</p> <p>Reason: In the interest of public health.</p>
12.	<p>(a) Prior to the commencement of any house unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority pursuant to Section 47 of the Planning and Development Act 2000, that restricts any such residential units permitted (the number and location of each housing unit being specified in such agreement), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all houses permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex unit for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units,</p>

	<p>in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.</p> <p>Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
13.	<p>The construction and demolition of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of work, noise and dust management measures, a Traffic Management Plan, details of disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
14.	<p>The development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.</p> <p>Reason: In the interest of sustainable waste management.</p>
15.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the</p>

	<p>matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
16.	<p>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.</p> <p>Reason: To ensure the satisfactory completion of the development.</p>
17.	<p>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.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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Stephanie Farrington
Senior Planning Inspector
17th of May 2022