



An  
Bord  
Pleanála

## Inspector's Report ABP-310577-21

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<b>Development</b>	Demolition of a house and construction of a building comprising 5 no. apartments.
<b>Location</b>	Ballinrobe Road, Aghadrinagh, Castlebar, Co. Mayo.
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	20/639
<b>Applicant(s)</b>	MGB Land Holdings Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party vs. Conditions
<b>Appellant(s)</b>	MGB Land Holdings Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30 <sup>th</sup> September 2021
<b>Inspector</b>	Stephen Ward

## 1.0 Site Location and Description

- 1.1. The site is located along the N84 (Castlebar to Ballinrobe) National Secondary Road on the southern margins of Castlebar, approximately 1.5km from the town centre. It is located along the western side of the N84 road, within a pattern of linear development which has extended southwards from the town. To the north of the site is a multi-unit residential development consisting of 41 units in several apartment blocks, while to the south of the site a pattern of ribbon development consisting of 15 detached dwellings extends for a distance of c. 250 metres. To the rear (west) of the site is a pond that is connected to Saleen Lake to the northwest. To the east of the site is a footpath and a wide grass verge with trees along the N84 road. The road consists of a single carriageway with a painted cycle lane on both sides. The land on the opposite (eastern) side of the N84 is undeveloped.
- 1.2. The site itself has a stated area of 0.1188 hectares and contains a single storey dwelling in a state of disrepair. There are some small outbuildings to the rear of the dwelling, but the area is densely overgrown. The site levels fall in an east to west direction from a level of c. 39.4m at the front of the site to c. 34m at the rear. There is a dwarf boundary wall along the front of the site and the rear boundary appears to consist of natural vegetation. There are concrete block walls of varying height along both side boundaries.

## 2.0 Proposed Development

- 2.1. The proposed development was amended by further information submissions and can be summarised as follows:
- Demolition of the existing dwelling and associated outbuildings.
  - Construction of a part single-storey part 2-storey apartment building containing 4 no. 2-bedroom and 1 no. 1-bedroom apartments.
  - Vehicular and pedestrian access.
  - 9 no. car-parking spaces including a suspended parking deck to the rear of the site.
  - Communal and private amenity areas.

- Lighting, boundary treatments, connections to services, and all associated and ancillary works.

2.2 It is proposed to connect foul water to the existing 150mm diameter foul sewer that runs through the rear of the site in a north-south direction. Surface water will be attenuated in cells at the rear of the site prior to discharge to the adjoining waterbody. A new water supply connection will be made to the existing mains along the N84 Ballinrode Road.

### 3.0 Planning Authority Decision

#### 3.1. Decision

By order dated 24<sup>th</sup> May 2021, Mayo County Council (MCC) issued notification of the decision to grant planning permission subject to 15 conditions.

Condition No. 2 states as follows:

*Apartment 4 and 5 shall be omitted from the development. The complex shall consist of 3 apartments only at ground floor level. Final ground floor plans, elevations and sections shall be submitted for written agreement to Mayo County Council prior to the commencement of any development on site. Final details of the boundary treatment including the southern boundary shall also be submitted for written agreement to Mayo County Council prior to the commencement of any development on site.*

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

Condition No. 15 states as follows:

*The following contributions shall be paid to Mayo County Council prior to commencement of the development. The development contributions shall increase in accordance with Wholesale Price Index for Building and Construction in January of each year from the date of grant of permission up to the date that payment is made to Mayo County Council.*

€714	-	<i>Amenities</i>
€3038	-	<i>Roads</i>
€476	-	<i>Footpaths</i>
€714	-	<i>Community, Open Space &amp; Recreational Facilities</i>
€1192	-	<i>Surface Water</i>
€12000	-	<i>Cash Deposit</i>

**Reason:** *To comply with Mayo County Council's Development Contribution Scheme*

## 3.2. Planning Authority Reports

### Planning Reports

3.2.1. The Planner's Reports form the basis for the Planning Authority decision. The initial report (29<sup>th</sup> October 2020) can be summarised as follows:

- The site is located within an area zoned 'Existing Residential Infill' in the Development Plan.
- An Appropriate Assessment under the Habitats Directive is not required in this instance.
- It is recommended that further information should be submitted to include:
  - A revised flood risk assessment to address the issue of loss of flood plain water storage and the provision of compensatory storage capacity in the event that it is intended to proceed with infilling the lower section of the site.
  - A Road Safety Audit.
  - Revised boundary treatment proposals.
- An advice note was also included in relation to potential overlooking of the adjoining property to the south and potential improvements to the design of the proposed units in terms of aspect, outlook, and lighting.

3.2.2. A Further Information Request was issued in accordance with the Planner's recommendation on 30<sup>th</sup> October 2020. The applicant's response on 2<sup>nd</sup> February 2021 outlined that a suspended deck would be formed at the rear of the site in lieu of site infilling. A Road Safety Audit was submitted along with revised boundary treatment proposals. Revisions were also made to the proposed design and layout of the proposed units to address the issues raised in the MCC 'Advice Note'. The subsequent MCC Planner's Report (23<sup>rd</sup> February 2021) recommended that clarification be sought in relation to the suspended deck structure and its relationship with flood levels. Clarification was also recommended in relation to boundary treatment proposals and the applicant was advised that there were still residential amenity concerns about the southern boundary proposals.

3.2.3. A request for clarification was issued in accordance with the Planner's recommendation on 26<sup>th</sup> February 2021, to which the applicant responded on 19<sup>th</sup> March 2021. Following the applicant's advertisement of the submission of further information in accordance with Article 35 of the Planning and Development Regulations 2001 (as amended), the final Planner's Report (19<sup>th</sup> May 2021) can be summarised as follows:

- The recommendations of the Road Safety Audit must be carried out.
- MCC is satisfied that the proposed development incorporating a suspended timber deck to facilitate car parking presents no risk to flooding.
- There are outstanding concerns about the excessive height of the proposed southern boundary, which ranges from 3.8m to 5.4m and has been proposed to overcome overlooking from apartment 4 and 5. The developer has also incorporated high-level windows and opaque glass in apartments 4 and 5. The high level windows are located in the living areas of both apartments, and while unit 5 has a balcony to the rear, unit 4 would be served by high level windows only. This would result in poor natural light and the residential amenity of future occupants would be adversely affected.
- The omission of units 4 and 5 would result in a design of much higher standard and will ensure that the residential amenity of the property to the south will not be adversely affected.

- Contributions should be applied for 2 of the 3 permitted units as credit should be allowed for the existing dwelling house on site.
- It is recommended to grant permission subject to conditions and this forms the basis of the MCC decision.

### **Other Technical Reports**

- 3.2.4. **Flood Risk Management**: Through consultation with the A/Senior Planner, it was recommended that a revised flood risk assessment be requested to address the issue of loss of flood plain water storage and the provision of compensatory storage capacity in the event that it is intended to proceed with infilling the lower section of the site. The subsequent report of 12<sup>th</sup> February 2021 requested clarification of drawings and details for the ‘Suspended Deck’ structure and its relationship with flood levels for the adjoining lake.
- 3.2.5. **Engineer**: Confirms that watermain adjoins the site boundary. No building should take place which would interfere with Irish Water infrastructure.
- 3.2.6. **National Roads Office**: The application does not raise any issues for the National Road system.
- 3.2.7. **Area Office**: No objection in principle subject to referral of layout re: fire and building standards to planner/architect, and suds/drainage to Climate Action Section, including drainage design system to mitigate flood risk.

### **3.3. Prescribed Bodies**

**TII**: In summary, the submission outlines that the proposal is at variance with policy guidelines and would adversely affect the operation and safety of the national road network for the following reasons:

- Section 2.5 of the Guidelines states that a proliferation of entrances, which would lead to a diminution in the role of transitional speed limit zones, must be avoided. The proposal would be at variance with national policy in relation to the control of frontage development on national roads.
- The proposed development would endanger public safety by reason of traffic hazard and obstruction of road users due to the movement of the extra traffic generated.

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

Two observations were received from the owner of the adjacent property to the south. The submissions outline that there is no objection subject to the completion of boundary works in accordance with agreed specifications.

## 4.0 **Planning History**

None.

## 5.0 **Policy and Context**

### 5.1. **National Policy / Guidance**

5.1.1 The **National Planning Framework (NPF)** is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains a number of policy objectives that articulate the delivery of compact urban growth as follows:

- NPO 3 (c) aims to deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints;
- NPO 4 promotes attractive, well-designed liveable communities;
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards;
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location;
- NPO 35 aims to increase residential density in settlements through a range of measures including infill development and site-based regeneration.

5.1.2 **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (DoEHLG, 2009)** hereafter referred to as 'the Sustainable Residential Development Guidelines' sets out the key planning principles which should guide the assessment of planning applications for development in urban areas. Section 1.9

recites general principles of sustainable development and residential design, including the need to prioritise walking, cycling and public transport over the use of cars, and to provide residents with quality of life in terms of amenity, safety and convenience. The guidelines promote lower densities in the general range of 15-20 units at the edge of small towns and villages, and also note the need to ensure the definition of a strong urban edge that defines a clear distinction between urban and the open countryside. A design manual accompanies the guidelines which lays out 12 principles for urban residential design relating to context, connections, inclusivity, variety, efficacy, distinctiveness, layout, public realm, adaptability, privacy and amenity, parking and detailed design.

5.1.3 **Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)**, hereafter referred to as the 'Apartment Guidelines', sets out the design parameters for apartments including locational consideration; apartment mix; internal dimensions and space; aspect; circulation; external amenity space; and car parking.

5.1.4 The guidelines for planning authorities on **Spatial Planning and National Roads (2012)** set out planning policy considerations relating to development affecting national primary and secondary roads, including motorways and associated junctions, outside the 50-60 kmh speed limit zones for cities, towns and villages. The guidelines aim to facilitate a well-informed, integrated and consistent approach that affords maximum support for the goal of achieving and maintaining a safe and efficient network of national roads in the broader context of sustainable development strategies, thereby facilitating continued economic growth and development throughout the country.

5.1.5 **The Planning System and Flood Risk Management Guidelines (DoEHLG, 2009)** require the planning system to avoid development in areas at risk of flooding unless appropriately justified and mitigated; adopt a sequential approach based on avoidance, reduction and mitigation; and incorporate flood risk assessment into the decision-making process.

## 5.2. **Castlebar and Environs Development Plan 2008-2014**

5.2.1 The lifetime of the Castlebar & Environs Development Plan 2008 – 2014 was automatically extended in accordance with the provisions of section 11A of the



Planning and Development Act 2000 (as amended). It remains the operative Development Plan for the area.

- 5.2.2 As per Map 1 of the Plan, the majority of the appeal site is zoned as 'Existing Residential Infill', the objective for which is to *'protect, preserve, improve and develop existing residential areas; to provide for appropriate infill residential development; to provide for new and improved ancillary services and to provide for facilities and amenities incidental to those residential areas'*.
- 5.2.3 A narrow strip along the northern boundary of the site is zoned 'New Residential (Medium Density)', the objective for which is *'to provide for new residential development, associated facilities and services.'* Finally, a minor portion to the rear of the site is zoned as 'Rural Character', with the objective to *'protect lands...so that their future development potential can be realised in a strategically planned manner'*.
- 5.2.4 Chapter 5 'Housing' outlines the 'Strategic Objective' to *'facilitate and provide for the housing requirements of the plan area to provide for a range of new residential accommodation appropriate to the changing needs of the population, subject to compliance with the Core Strategy'*. Other relevant policies and objectives can be summarised as follows:
- HO1** Provide a suitable range of housing type and in particular to meet the requirements of smaller household size.
- HO-6** Facilitate the development of vacant and undeveloped residential lands through the use of all available tools and mechanisms.
- HO 6** Develop infill sites in existing residential areas as a means of providing additional housing and increasing density.
- HP 7** Encourage higher density in accordance with the Sustainable Residential Development Guidelines.
- HP 8** Require a high standard of design and layout in all residential developments.
- 5.2.5 Section 7.2 deals with 'Roads', and policy TP 1 aims to resist inappropriate development on existing and/or National and Regional Roads that may adversely impact on traffic safety and carrying capacity.
- 5.2.6 Chapter 9 deals with the 'Natural Environment and Recreation' and objective NEO 1 aims to protect the natural environment including public and private open space,

nature heritage, landscapes and water resources. NEP 18 states that development proposals must take into account existing water resources and their amenity, heritage and environmental importance, and that any proposals that are likely to have impacts will not be permitted. Section 10.5 deals with 'Flood Risk Management' and PUP 8 highlights the need to protect areas at risk from flooding and those which perform a flood control function.

5.2.7 Section 14 'Development Management' sets out a variety of general principles and standards, as well as those that apply to particular areas or development categories. It includes guidance on density and height, the design and layout of apartment developments, as well as standards for 'infill development'.

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

At a distance of c. 5km to the north and 6km to the east of the appeal site, the River Moy SAC (site code 002298) is the nearest Natura 2000 site.

### 5.4. **Environmental Impact Assessment - Preliminary Examination**

5.4.1. An Environmental Impact Assessment (EIA) Screening Report was not submitted with the application. With regard to EIA thresholds, Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,
- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha 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.)

5.4.2. It is proposed to construct a residential development containing just 5 dwelling units. Therefore, the number of dwellings proposed is well below the threshold of 500 dwelling units. The site has an overall area of c. 0.1188 ha and is not located within a 'business district'. The site area is therefore well below the applicable threshold of 10 ha.

- 5.4.3. The site is already developed and consists of a dwelling, outbuildings and overgrown gardens. It is largely surrounded by residential development, some of which is similar to the nature and density of the proposed development. The introduction of a residential development will not have an adverse impact in environmental terms on surrounding land uses.
- 5.4.4. The site does not include any Protected Structures and is not within an Architectural Conservation Area or a Zone of Archaeological Protection. The proposed development is not likely to have a significant effect on any European Site (as outlined in Section 8.0 of this Report). Although the site adjoins a waterbody, I am satisfied that standard construction practice for this minor development would ensure that there would be no significant effects on this or the wider catchment area (whether linked to any European site or other sensitive receptors).
- 5.4.5. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing/mixed-use development in the area. 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 Mayo County Council, upon which its effects would be minimal.
- 5.4.6. Having regard to the above, I consider that, by reason of the nature and scale of the proposed development and the location of the subject site, the proposed development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a determination in relation to the requirement for an EIAR was not necessary in this case (See Preliminary Examination EIAR Screening Form).

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

- 6.1.1. The applicant has appealed conditions 2 and 15 of the MCC decision to grant permission. The appeal requests that the Board amend the conditions and expressly seeks that the Board limits its deliberations to the 'conditions only'. In the event that the Board decides to carry out a *de novo* assessment, the appeal requests an opportunity to make further comments.

## Condition 2

6.1.2. The applicant's grounds of appeal can be summarised as follows:

- The proposed southern boundary has been agreed with the adjoining owner, which was not given appropriate regard by the planning authority.
- The proposed boundary is neither unusual or disproportionate in a residential context. A substantial part of the boundary is below the floor level of the adjoining property and the overall height is only marginally increased by 0.4m.
- The proposed 'green wall' would substantially lessen the bulk of the boundary.
- The proposed 'first floor' apartments are essentially at street level or ground level relative to the neighbouring property and are setback 7 metres from the boundary. As such, the issue of overlooking does not arise, regardless of the height of windows or type of boundary.
- The proposed high-level windows are not required and standard windows can be accommodated without impacting on the adjoining property. This would also provide an entirely acceptable level of residential amenity for proposed units 4 & 5.
- These dual and triple aspect units would be more than adequately served by natural light, particularly in the event of the provision of standard windows to the southern elevation of units 4 & 5 as suggested.
- The proposed 2-storey development is entirely reasonable and proportionate for the character of the area and is in accordance with the Urban Development and Building Heights Guidelines for Planning Authorities, 2018.
- A revised wording for condition no. 2 is proposed as follows:

*Standard window size (in lieu of high level windows) shall be provided to the southern elevation of Units 4 & 5, details of which shall be submitted for written agreement to Mayo County Council prior to commencement of any development on site. Boundary treatments shall be in accordance with drawings and details submitted to the planning authority in March 2021.*

*Reason: In the interests of clarity.*

## Condition 15

6.1.3. The applicant's grounds of appeal can be summarised as follows:

- The Castlebar Town Council Development Contribution Scheme 2011 applies, as confirmed by the Board in previous cases (ABP Refs. 302292-18 and 305019-19) and supported by Section 25(1)(a) of the Local Government Reform Act 2014. The Planning Authority has incorrectly applied the terms of the Mayo County Council Development Contribution Scheme 2004.
- No surface water will enter public infrastructure and, as such, levying for infrastructure is not 'relevant'. This is a key test for each contribution category.
- The Footpaths & Public Lighting category is based on intended provision by the local authority, which does not arise in this instance as it will be provided by the developer. Accordingly, no charge arises, as has been confirmed by the Board in previous cases (ABP Refs. PL16.242751, PL16.242332, PL16.243587).
- The 'Artistic Feature' category only applies to schemes of 20+ units.
- The scheme is not a 'Housing Estate' and is not intended to be taken in charge. No charge should apply for this category.
- The requirement to pay an upfront cash deposit of €12,000 is an unnecessary imposition. Such requirements are not appropriate for small infill developments which will not be taken in charge and the Board is requested to omit this requirement as there would be no clear purpose or pathway for reimbursement.
- A revised wording for condition no. 15 to account for 4 additional units is proposed as follows:

*The following contributions (Total = €3,420) shall be paid to Mayo County Council prior to commencement of the development. The development contributions shall increase in accordance with Wholesale Price Index for Building and Construction in January of each year from the date of grant of permission up to the date that payment is made to Mayo County Council.*

€0	-	<i>Surface Water Services</i>
€1,080	-	<i>Amenities</i>
€1,440	-	<i>Road Maintenance/Repair</i>
€0	-	<i>Footpaths &amp; Public Lighting</i>
€0	-	<i>Artistic Feature</i>
€720	-	<i>Community, Open Space &amp; Recreational Facilities</i>
€180	-	<i>Recycling Facilities</i>
€0	-	<i>Housing Estate Take-Over</i>

**Reason:** *To comply with the Castlebar Town Development Contribution Scheme.*

## 6.2. Planning Authority Response

None.

## 6.3. Observations

None.

## 6.4 Prescribed Bodies

None.

## 7.0 Assessment

### 7.1. Introduction and Scope

7.1.1 This first-party appeal relates only to condition no.'s 2 and 15 and requests that the Board's deliberations be limited to these issues. While an appeal against a development contribution alone (i.e. condition no. 15) would not allow for a *de novo* assessment, it should be noted that the inclusion of condition no. 2 in the appeal potentially widens the scope of the appeal. In such cases, under Section 139 of the Planning and Development Act 2000 (as amended), the Board may, in its absolute discretion, restrict its determination to the conditions of the permission and not carry

out a *de novo* assessment. Therefore, in the following paragraphs I will discuss the appropriate scope of the appeal having regard to the nature of condition no. 2.

- 7.1.2 In terms of the principle of the development, I note that the site is zoned for residential uses and would result in an increased residential density on a brownfield/infill site, which would be consistent with local and national policy aims to promote more compact and sustainable residential development. The Development Plan or the Sustainable Residential Development Guidelines do not apply a specific density range for such 'inner suburban/infill' areas. However, having regard to the site location and varying density of surrounding development, I am satisfied that both the density proposed by the applicant (i.e. 5 units @ 42 units per hectare) and that permitted by condition no. 2 (i.e. 3 units @ 25 units per hectare) would be acceptable in this case.
- 7.1.3 Regarding the proposed design and layout, I do not consider that the omission or inclusion of units 4 and 5 would have a significant impact on the quality of the 3 ground floor units or the overall scheme, including communal facilities. Accordingly, I do not consider that the nature of condition no. 2 is such that would warrant a *de novo* assessment in this respect.
- 7.1.4 The applicant has included a site-specific Flood Risk Assessment and has designed the lowest floor level (37.25m) to be significantly above the 1 in 1000-year flood level (35.76m) for the adjoining waterbody. Site filling proposals have also been amended to provide a suspended deck above the flood level and thereby avoid the loss of on-site flood storage. Units 4 and 5 are first floor apartments and their inclusion or omission would not have any significant effects in this regard.
- 7.1.5 I note that the TII has raised concerns about the impact of the development on the safety and capacity of the adjoining N84 National Secondary Road and that Section 2.5 of the Spatial Planning and National Roads Guidelines requires Development Plan policy to avoid a proliferation of entrances in speed transition zones. However, subject to the completion of a road safety audit, Section 2.5 of the Guidelines allows for a limited level of direct access to facilitate orderly urban development. In this case the applicant has submitted a Road Safety Audit and, irrespective of the omission or inclusion of units 4 and 5, I consider that the proposed development would constitute a limited level of additional development that would facilitate orderly

urban development in accordance with the provisions of the Spatial Planning and National Roads Guidelines.

7.1.6 Having regard to the above and the nature of the conditions under appeal, I am satisfied that the development would otherwise be in accordance with the proper planning and sustainable development of the area, and that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted. My assessment will therefore be limited to the matters raised in relation to the terms of the conditions, pursuant to the provisions of section 139 of the Planning and Development Act 2000 (as amended).

7.1.7 Having inspected the site and examined the application details and all other documentation on file, and having regard to relevant local and national policies/guidance, I consider that the main issues raised in the appeal are as follows:

- The proposed southern boundary
- Residential amenity standards for units 4 & 5
- Development Contributions

## 7.2 **The proposed southern boundary**

7.2.1. The planning authority had outstanding concerns about the excessive height of the proposed southern boundary and considered it to be extensive and visually unappealing. If granted, the Planning Authority considered that it would negatively impact on the residential amenity of the existing/future occupants of the property to the south. The planning authority considered that the excessive height was a result of attempts to overcome overlooking of the adjoining property to the south.

7.2.2 Having inspected the site and reviewed the file drawings, I note that the top level of the proposed southern boundary (42.3m) would be just c. 0.5m above the level of the existing fence along this boundary. I consider this to be a relatively minor height increase which would not detract from the residential amenity of the existing property to the south in any significant way. Further to the rear of the property (i.e. beyond the end of the existing fence) I would accept that the height difference between the existing and proposed boundary would be significantly greater (i.e. 1.8m). However, it should be noted that this rear section of the property is steeply sloping, overgrown and is not in active use as an amenity space. Accordingly, I do not consider that the



proposed southern boundary would have any significant negative impacts on the residential amenity of the adjoining property, and I have no objection in this regard.

7.2.3 Having established the suitability of this boundary, I also propose to address the related question of overlooking from the south-facing windows in units 4 & 5. While I acknowledge that high-level windows were included in the proposed design, the appeal has proposed that these would be replaced with standard size windows. I consider that the centre-level of any such 'standard' windows should be taken as 42.6m and 41.5m for units 4 and 5 respectively (i.e. 1.5m above the proposed floor levels), which would be only marginally higher than the top level of the southern boundary (42.3m) for unit 4 only. Given the setback of unit 4 from the southern boundary of c. 6.5m, I am satisfied that no significant overlooking of the property to the south would occur from 'standard' south-facing windows. Accordingly, I consider that the proposed high-level windows are unnecessary and can be replaced with windows of standard size and height as proposed in the appeal.

7.2.4 As well as impacts on the existing property to the south, I have considered that suitability of the proposed boundary in relation to the proposed units. Due to the lower levels proposed within the appeal site, the overall height of this boundary would be much more pronounced, ranging to a maximum height of c. 5.4m at a distance of c. 6.5m from the proposed units. However, it is noted that this boundary is proposed as a 'green wall' facing the proposed development, which will acceptably soften the visual impact of the proposed boundary and its relationship with the proposed units. The drawing details submitted for the proposed 'green wall' (Drg No. 15-407-TD-10) do not relate to this development and the planting schedule (Drg No. 15-407-TD-09) has not been included. However, subject to the agreement of such further details I am satisfied that the proposed southern boundary is acceptable.

### 7.3 Residential amenity standards for units 4 & 5

7.3.1. The Planning Authority had outstanding concerns about the proposed high-level windows and opaque glass in apartments 4 and 5, noting that the high level windows would be located in the living areas of both apartments, and that while unit 5 would have a balcony to the rear, unit 4 would be served by high level windows only. The Planning Authority concluded that this would result in poor natural light and the residential amenity of future occupants would be adversely affected.

- 7.3.2 In terms of general standards, I have reviewed the floor areas and dimensions for units 4 & 5 with regard to the Apartments Guidelines. The overall floor areas significantly exceed the requirements for 1 and 2-bed units. The areas and dimensions for individual living/dining/kitchen areas, bedrooms, storage and private amenity spaces also comply with, and in some cases significantly exceed, the required standards.
- 7.3.3 With specific reference to the daylight concerns raised by the planning authority, I note that the Development Plan advises that housing design shall consider orientation and sun-path so as to maximise amenity, daylight and solar gain, and that careful consideration should be given to daylight/sunlight in infill development proposals. However, it does not reference any particular standards for daylight/sunlight. The Design Standards for New Apartments Guidelines (2020) also highlight the importance of provision of acceptable levels of natural light in new apartment developments, which should be weighed up in the context of the overall quality of the design and layout of the scheme and the need to ensure an appropriate scale of urban residential development. It states that planning authorities '*should have regard*' to quantitative performance approaches to daylight provision outlined in guides like the BRE guide '*Site Layout Planning for Daylight and Sunlight*' (2nd edition) or BS 8206-2: 2008 – '*Lighting for Buildings – Part 2: Code of Practice for Daylighting*' when undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision.
- 7.3.4 In this case the applicant has not submitted an assessment of the daylight/sunlight levels available within the proposed apartments. However, having regard to the provisions of the Development Plan and the Section 28 guidance outlined in the previous paragraph, I do not consider that a daylight/sunlight assessment of the proposed units is a mandatory requirement in this case. The Development Plan does not specify any particular standard for compliance or assessment. And while the Apartments Guidelines recommend consideration of the BRE/BS standards when undertaken by development proposers, they do not require that assessments must be undertaken.
- 7.3.5 In the absence of an assessment, I will consider the specifics of the design and layout of the proposed units 4 and 5. And in doing so, I will account for the inclusion of standard windows in the southern façade as previously discussed in paragraph 7.2.3

above. In this respect, I note that unit 4 is dual aspect and unit 5 is triple aspect. Both living/kitchen/dining areas are generously sized and benefit from a south or southwest aspect. And subject to the replacement of the proposed high-level windows, I consider that the proposed units will be served by a generous extent of glazing. Furthermore, there is no obstructive high-rise development in close proximity to the proposed units that would overshadow the proposed units. The Apartments Guidelines acknowledge that the above factors effectively influence the daylight/sunlight levels within proposed developments. Given that these design factors can be appropriately addressed, I am satisfied that the proposed development will provide units 4 and 5 with an acceptable level of daylight/sunlight and that no further assessment is required in this regard.

#### **7.4. Development Contributions**

7.4.1. At the outset it is important to establish the correct Development Contribution Scheme to apply to this case. The Planning Authority has applied the Mayo County Council (MCC) scheme and the Planner's report outlines that the amounts have been calculated on a 'cost per dwelling' basis (i.e. 2 dwellings). The applicant argues that the Castlebar Town Council (CTC) scheme continues to apply and has put forward an alternative calculation. The Planning Authority has not responded to the applicant's appeal.

7.4.2 I note that the MCC scheme was adopted in 2004 and was amended in 2007. The CTC scheme was adopted at a later date on 14<sup>th</sup> April 2011. A copy of the CTC scheme is included with the appeal and I can confirm that it is consistent with the official copy received by the Board (despite that the heading in the document states 'Draft').

7.4.3 I note that the Local Government Reform Act 2014 dissolved several town councils, including Castlebar Town Council. However, Section 25 of the Act provided for the continuance of all acts done and decisions made, whether by resolution, manager's order or otherwise, before the dissolution to continue to have all such force and effect as they had immediately before that date. Therefore, I consider that the CTC scheme will not have ceased to have effect by virtue only of the dissolution of the town council. I also note that Section 48(2)(a) of the Planning and Development Act 2000 (as amended) allows the planning authority to make one or more schemes in

respect of its functional area. Therefore, the continuing operation of separate CTC scheme for the former town council area is not incompatible with the legislation.

7.4.4 The Board has received no notification of a replacement of the CTC scheme for the former town council area and, having regard to the forgoing, I am satisfied that the Castlebar Town Council Development Contribution Scheme 2011 continues as the operative scheme for the subject area. The Board should note that this position is consistent with recent decisions (ABP Refs 302292-18 and 305019-19).

7.4.5 Schedule 1 of the CTC scheme sets out the relevant contributions for residential development and can be summarised as follows:

<b>Category of Contribution</b>	<b>Amount (€)</b>	<b>Basis for determination</b>
Water Services	900	Cost per dwelling
Sewerage Services	1350	Cost per dwelling
Surface Water Services	450	Cost per dwelling
Amenities	270	Cost per dwelling
Carparking	3150	Cost per space
Road Maintenance / Repair	360	Cost per dwelling
Footpaths & Public Lighting	135	Cost per linear metre (no land acquisition)
	180	Cost per linear metre (land acquisition)
Artistic Feature	4500	20+ Houses
Community Open Space & Recreational Facilities	180	Cost per dwelling
Recycling Facilities	45	Cost per dwelling
Housing estate Take-over	180	Cost per dwelling

7.4.6 In respect of each of the categories outlined above, I firstly note that the responsibility for Water & Sewerage Services levies for permissions granted after 1<sup>st</sup> January 2014 have been transferred to Irish Water under the provisions of the Water

Services (No. 2) Act 2013. Accordingly, no contributions shall apply for these categories and this is consistent with the decision of the Planning Authority.

7.4.7 However, the Planning Authority has included charges for ‘footpaths’ and ‘surface water’ based on 2 additional dwellings. On the question of ‘footpaths’ I note that the CTC scheme is determined based on ‘cost per linear metre’, which would not be relevant in this case given that the extension/provision of additional footpaths is not required on this infill brownfield site. Regarding ‘surface water’, I would also note that the applicant’s proposals are contained within the appeal site and do not rely upon public infrastructure. Ultimately, the CTC scheme clarifies that *‘the various categories of contribution are applied to a particular planning application **only** where they are relevant’*. Therefore, given that no linear provision of footpaths (or public lighting) is required, and that the public surface water network will not be affected by the proposed development, I am satisfied that these categories are not relevant and that a contribution should not apply in relation to footpaths, public lighting or surface water.

7.4.8 The application does not rely on any public parking provision and no contribution should apply in this respect. The ‘Artistic Feature’ category is only applicable for applications of 20+ houses and should not apply in this case. I am also satisfied that the ‘housing estate take-over’ category does not apply as a development of this nature would not be taken in charge by the local authority.

7.4.9 Otherwise, I am satisfied that the remaining categories relating to ‘amenities’, ‘road maintenance/repair’, ‘community open space & recreational facilities’, & ‘recycling facilities’ do apply on a ‘cost per dwelling’ basis. I consider that credit should apply for the existing dwelling on site and, given that I am recommending the inclusion of 5 units, the contributions should therefore apply for 4 additional dwellings. Accordingly, I am recommending that the development contributions should apply as follows:

Category of Contribution	Amount (€)	Basis for determination	No. of dwellings	Amount (€)
Amenities	270	Cost per dwelling	4	1080
Road Maintenance / Repair	360	Cost per dwelling	4	1440

Community Open Space & Recreational Facilities	180	Cost per dwelling	4	720
Recycling Facilities	45	Cost per dwelling	4	180
<b>Total</b>				<b>3420</b>

7.4.10 Finally, I note that the Planning Authority has included a requirement for a ‘Cash Deposit’ of €12,000 as part of development contribution. The basis for this requirement is not clearly explained and I do not see any basis for its inclusion in either the CTC or MCC schemes. I accept that such deposits are usually required to ensure the satisfactory completion of the development, which does not come under the scope or purpose of a section 48 development contribution. However, notwithstanding that the development may not be taken in charge by the local authority, it involves significant alterations to the existing entrance arrangements, including works to the existing footpath, cycle lane, road, grass verge and planting within the public domain, and I consider it reasonable that a separate additional condition should apply in this regard. I am satisfied that Section 139 (1)(c) of the Planning and Development Act 2000 (as amended) provides for the attachment of ‘other conditions’ (i.e. conditions other than those which are appealed). The amount specified by the planning authority (i.e. €4000 per dwelling) is not excessive but I do not consider that any such security should be limited to a cash deposit. This would be consistent with the Board’s approach under ABP Ref. 302292-18.

## 8.0 Appropriate Assessment

8.1 The nearest Natura 2000 site is the River Moy SAC (site code 002298), which is located approximately 5km to the north and 6km to the east of the appeal site. The appeal site is indirectly linked to the River Moy SAC via the adjoining ‘pond’ to the west and Saleen Lough, which enters Lough Lannagh prior to the Castlebar River, which is a tributary of the River Moy. I estimate that the separation distance via waterbody routes extends to c. 13km. I am satisfied that any potential for impact is limited to the effects of surface water and foul water emissions to the surrounding drainage network.

- 8.2 With regard to surface water, I acknowledge that it is proposed to discharge to the adjoining water body which is hydrologically linked to the Natura 2000 network. However, I do not consider that the limited scale of the proposed development is likely to significantly impact discharge flows in terms of quantity and quality. There is also limited potential for surface water contamination during construction works but I am satisfied that best-practice construction management would satisfactorily address this matter. I consider that there would be significant dilution capacity in the existing drainage network between the appeal site and the Natura 2000 network, and I am satisfied that there is no possibility of significant impacts on European sites from surface water associated with the development.
- 8.3 The wastewater emissions from the development will result in an increased loading on the Castlebar WWTP, which discharges to Castlebar River and, accordingly, provides an indirect link between the appeal site and the Natura 2000 network. The WWTP has a design PE (population equivalent) of 28,000 and, according to the Irish Water Annual Environmental Report for 2020, the final effluent is compliant with the Emission Limit Values of its Discharge License. Having regard to the limited scale of the development and the associated discharges, together with the significant hydrological buffer between the appeal site and the Natura 2000 network, I am satisfied that there is no possibility that the additional foul water loading resulting from the development will result in significant effects on the River Moy SAC.
- 8.4 Having regard to the above preliminary examination, it is concluded that no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site. No mitigation measures have been relied upon in reaching this conclusion.

## 9.0 Recommendation

I recommend that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted and that assessment should be limited to the matters raised in relation to the terms of the conditions, pursuant to the provisions of section 139 of the Planning and Development Act 2000 (as amended). I recommend that the Planning Authority be directed to AMEND

conditions numbers 2 and 15 so that they shall be as follows for the reasons set out, and to ATTACH a further condition so that it shall be as follows for the reason set out.

2. (a) The proposed southern boundary shall be constructed in accordance with Drawing No. L(99)07A submitted to the Planning Authority on the 19<sup>th</sup> day of March 2021. Precise details of the proposed 'green wall' system, including a planting and maintenance schedule, shall be submitted to and agreed in writing with the planning authority, prior to commencement of the development.
- (b) The proposed high-level windows in the southern façade of Apartment No.'s 4 & 5 shall be replaced with windows of standard size and height, details of which shall be submitted to and agreed in writing with the planning authority, prior to commencement of the development.

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

15. The developer shall pay to the planning authority a financial contribution of €3,420 (three thousand, four hundred and twenty euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Castlebar Town Council Development Contribution Scheme 2011 made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination.

**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.

### **New Condition**

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 the amount of €20,000 (twenty thousand euro) 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 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.

## **10.0 Reasons and Considerations**

The proposed southern boundary would not be excessive in scale or height and would not detract from the residential amenity of existing properties or the proposed apartments. Furthermore, it is considered that high-level windows are not required in the southern façade of apartments 4 and 5 and that the installation of standard windows would ensure a suitable level of daylight and sunlight within the proposed apartments and would not result in overlooking of the adjoining property to the south. Therefore, the omission of apartments 4 and 5 is unwarranted and condition number 2 has been amended accordingly. The planning authority did not properly apply the terms of the development contribution scheme adopted under section 48 of the Planning and Development Act 2000, as amended, being the Castlebar Town Council Development Contribution Scheme 2011, and it is necessary therefore to amend the contribution figure applied under condition number 15. Furthermore, the

requirement for a security bond does not fall within the scope of a scheme adopted under section 48 of the Planning and Development Act 2000, as amended and the inclusion of same under condition number 15 is unwarranted and should properly be attached as a standalone condition.

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Stephen Ward  
Senior Planning Inspector  
19<sup>th</sup> October 2021