



An  
Bord  
Pleanála

## Inspector's Report ABP-310589-21

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<b>Development</b>	9 apartments
<b>Location</b>	The Orchard, Rathgoggan Middle, Charleville, County Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	20/4793
<b>Applicant(s)</b>	John McCormack
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Brendan & Mary McKiernan & Others
<b>Date of Site Inspection</b>	30 <sup>th</sup> November, 2021
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

1.1. The 0.103 hectare site is located to the east of the town centre of Charleville in County Cork. It is sited with a residential estate, "The Orchard", an estate of two-storey houses. It comprises a grassed area enclosed by masonry and stone walls on its north-west and south-west sides. It is accessed via the existing estate road. It is bounded to the east by the estate road and two-storey terraced houses on the opposite side of the road, to the north by terraced housing and to the south by open space. Undeveloped lands lie to the west which are located to the rear of properties fronting onto Clancy Terrace.

## **2.0 Proposed Development**

2.1. The original proposed development submitted to the planning authority comprised the construction of a three-storey apartment block containing 9 two-bedroom apartment and the provision of 10 parking spaces, bike and bin storage, and landscaping. The gross floor area of that proposed development was 750 square metres.

2.2. Details submitted with the application included a Design Statement and a Water and Drainage Report.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 24<sup>th</sup> May, 2021, Cork County Council decided to grant permission for the proposed development subject to 30 conditions.

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

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

The Planner noted the site's and adjoining land's planning history, policy provisions, reports received, and third party submissions. It was noted that the site area formed part of Planning Permission 02/5499 and was in an area proposed to be a car parking area and an area of open space. It was noted that the car park was not

constructed and the area now entailed a larger area of open space than that outlined in Planning Application 02/5499. It was observed that the southern area of the proposed apartment block, part of the servicing area, and the proposed car park encroach on this area of the previous planning permission site. It was submitted that, given the zoning and history of the site, the principle of a residential scheme can be considered but that, given the encroachment into the site and open space area of the scheme granted under 02/5499, there were concerns relating to the scale and extent of the scheme. Concerns were also raised about overlooking and shadowing. It was stated that the applicant should revise plans to withdraw the proposed scheme so that it does not encroach into the existing and permitted scheme outlined in 02/5499. It was recommended that further information be sought in relation to the overlap with the development permitted under P.A. Ref. 02/5499, parking, title, shadow and daylight assessment, omission of two balconies, compliance with apartment guidelines, Part V provisions, a construction management plan, a landscaping plan, lighting provisions, a Pre-Connection Enquiry with Irish Water, invasive plant species, and surface water attenuation and treatment.

### 3.2.2. Other Technical Reports

The Public Lighting Engineer requested further information on the provision of public lighting.

The Water Services Section had no objection to the proposal.

The Environment Section noted non-compliance of Charleville WWTP with emission limit values and the lack of a connection feasibility agreement with Irish Water. It was considered that the latter could be conditioned. A grant of permission subject to conditions was recommended.

The Estates Report indicated no objection to the proposal subject to conditions.

The Conservation Officer noted the site adjoins an Architectural Conservation Area and it was considered the proposal would not adversely impact on it. A grant of permission subject to a condition was recommended.

The Area Engineer noted the site notice was in place on the date of inspection and that the application forms part of an existing maintained green area. It was submitted that the proposal would contribute to a high level of traffic from the estate, where parking is an issue. The presence of Japanese Knotweed on the site was

acknowledged. It was noted that the site is where a parking area was to be provided for the estate under Planning Permission 02-5499 and that there is a shortfall of one space in accordance with development plan requirements. A refusal of permission was recommended relating to traffic hazard arising from restricted sight distance at the junction of the estate with the public road, the available parking, and inadequate parking provision.

### **3.3. Prescribed Bodies**

Irish Water requested further information in the form of submission of a Pre-Connection Enquiry to Irish Water to determine the feasibility of connection to the public water / wastewater infrastructure and the submission of a Confirmation of Feasibility to the planning authority.

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

Objections to the proposal were received from Pat and Eileen O'Hara, Brendan and Mary McKiernan, Paul Reidy, Joanna Krala, William Casey, Ayman Shamseldin, Lynda Maher, Arcadii Cecoi, Pat Morris, Agnieszka Jaworouska, Pdraigh and Caroline Murphy, Kathleen and John Gleeson, Karina Svitanova, Nicola O'Toole, Martin and Olivia O'Connor, Aisling and Thomas Lenihan, Colleen Williams, Kathleen Reeves, David Atkins, Urszula Traczyk, R. Jackman. The concerns raised related to the building height, traffic and parking, estate maintenance, invasive plant species, loss of green space, the building design, landscaping, lack of site notice, residential amenity, land ownership, and health and safety.

3.5. A request for further information was made on 20<sup>th</sup> July, 2020 in accordance with the Planner's recommendation and a response was received on 9<sup>th</sup> March, 2021. The response reduced the scheme to four apartments and the provision of four car parking spaces.

3.6. On receipt of this information, the reports to the planning authority were as follows:  
Irish Water had no objection to the proposal.

The Public Lighting Section had no objection to the proposal subject to the attachment of a condition.

The Conservation Officer referred to the previous report and recommended the attachment of conditions therein.

The Planner recommended clarification relating to an overlay plan relative to the site of 02/5499, Land Registry details, and parking and surface water provisions.

3.7. A request for clarification was sought on 6<sup>th</sup> April, 2021 and a response was received on 28<sup>th</sup> April, 2021.

3.8. On receipt of this information, the reports to the planning authority were as follows:

The Water Services Section had no objection to the proposal.

The Area Engineer recommended approval subject to a schedule of conditions.

The Planner recommended a grant of permission subject to a schedule of conditions.

## 4.0 **Planning History**

### P.A. Ref. 02/5499

Permission was granted for 18 houses. It is understood that part of the site included the current appeal site.

### P.A. Ref. 06/13480

Permission was granted for two semi-detached houses on the site.

## 5.0 **Policy Context**

### 5.1. **Fermoy Municipal District Local Area Plan**

Charleville is a designated a 'Main Town' in the Plan.

#### Zoning

The site is zoned 'Existing Built Up Area'.

#### Infrastructure

*Wastewater Services*

Upgrading of the Charleville WWTP is required to accommodate the proposed development in Charleville. There are assimilative capacity issues in relation to the waters receiving the treated effluent from Charleville WWTP.

### *Surface Water*

All new development will be required to address surface water disposal via sustainable urban drainage systems in line with surface water management policy set out in section 11.5 of the County Development Plan 2014.

## **5.2. EIA Screening**

Having regard to the nature, scale and location of the proposed development, there is no real likelihood of significant effects on the environment. The submission of an EIAR is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The grounds of the appeal may be synthesised as follows:

- The appellants were not informed of the significant alterations to the initial plans and the decision came as a surprise.
- The plans have been revised, showing the car park destined to serve the residents of the estate to be retained/completed in the future.
- The proposal is still at odds with the general style of the area and a pair of semi-detached houses similar to the rest of the estate and to what was granted under P.A. Ref. 06/13480 would be more fitting. The proposal would intensify the use of the area and would be at odds with the character of the estate.
- The significant changes should have been advertised by withdrawing the original application and reapplying or by re-advertising as significant further information. The replacement of a three-storey building with 9 apartments by a two-storey building with four apartments is very significant further information.

The Board is asked to refuse the proposed development.

## 6.2. Applicant Response

The applicant's response to the appeal was received outside the appropriate period for making such a response.

## 6.3. Planning Authority Response

I have no record of any response to the appeal from the planning authority.

## 7.0 Assessment

7.1. I acknowledge that the appellants have noted the significant changes to the original scheme that arose at the time of the submission of further information. I accept that the replacement of a three-storey building with 9 apartments by a two-storey building with four apartments constitutes significant further information and is a material change to the original proposal. It is also noted that the site boundary for the development changed as the site returned to reflect the area previously permitted for the development of two semi-detached houses under Planning Permission 06/13480. I submit that the planning authority made a mistake in this instance by not requesting the applicant to withdraw the original application or to at least request new public notices such that the public could offer considerations on the revised proposal submitted by way of further information. It was clear from the outset with this application that there was substantial interest in the proposed development by the existing residents in this estate. Third parties were not informed of the proposed changes and were excluded at that stage of the process.

7.2. I note that the proposed development at the further information stage constitutes a very substantial reduction in the scale, form, mass and density of development at this location. I again acknowledge that permission was previously granted for two semi-detached houses on this site and I note that the appellants considered that development of this nature would be fitting for the site. I acknowledge the range of submissions made to the planning authority and I observe the submission in the appeal relating to how the proposal would intensify the use of the area and would be at odds with the character of the estate. The important issues of the scale, character

and nature of the development appear to be at the centre of the appellants' concerns along with the failure to provide for public parking with the original housing scheme. The other principal concerns relate to the impact on the amenities of residents at this location. I consider that these issues can reasonably be assessed and that the Board could make an informed decision on this proposed development of four apartments, having regard to the principal areas of concern of the residents in the existing estate.

- 7.3. The site of the proposed development, as revised by way of further information, is understood to not form part of the area originally proposed for parking with the housing scheme that has been developed to date. The site is distinctively undeveloped at this time and does not form part of the public open space that has been developed to serve the residents. This site has been the subject of a previous grant of planning permission for two semi-detached houses. Thus, the principle of residential use on the site is seen to be acceptable and, indeed, such a development appears to be acceptable to the appellants. The issue that must be for consideration, therefore, is what differences would arise with the development of four apartments on the site in place of two houses.
- 7.4. It is evident that the development of apartments would introduce an improved mix of residential units into the estate. This estate is close to the town centre and the introduction of apartments in such a location could be seen to accommodate a more diverse range of residential needs. This would not distort the character of the estate as the development would be wholly residential in character.
- 7.5. It is apparent that the 2 no. two bedroom and 2 no. one bedroom apartments could potentially generate an increased level of vehicular traffic over the previously permitted 2 no. three bedroom semi-detached units. However, I note the provision of an on-site parking space for each apartment and again I note the proximity of this location to the town centre and its wide range of commercial, community and social services that are available within walking distance. I do not foresee the proposed development causing any particular adverse traffic impacts. The internal road network and access into the estate would be used and this is seen to be adequate to accommodate vehicular traffic movements.
- 7.6. With regard to the impact on the established residential properties in the vicinity of the site, I note the proposed development would be two storeys in height and



compatible in scale with the established residential housing in the vicinity. The block's general location would be somewhat similar to that of the previously permitted semi-detached units previously permitted that were considered acceptable by the appellants. I note the footprint of the block would be somewhat greater than that of the houses. However, the separation distance from the northern site boundary would be slightly increased in the current proposal and the development would be further set back from the estate road to the east. The development would provide off-street car parking, bicycle and bin storage, and circulation space around the building. The site can adequately accommodate the scale of development being proposed and would provide for the needs of the occupants of the proposed apartments. The development would abut the public open space for the estate. I note the private amenity provisions for the occupants of the proposed apartments. Areas of private amenity space would be provided for the two ground floor apartments on the west side of the block and a balcony would be provided for the two bedroom apartment at first floor level on the west side of the block and a balcony would be provided for the one bedroom apartment on the south side of the block. Neither of these provisions would result in any overlooking concerns for residents. The proposed development would be reduced in height and set back further from the northern site boundary compared with the previously permitted development on this site. The applicant's site section drawing ably demonstrates the substantial lower height of the block over neighbouring houses. Thus, the proposed development could not be seen to result in any increased overshadowing of properties to the north.

- 7.7. In conclusion, I submit that the proposed development would not result in a change in the character of the residential estate and that the nature and scale of development are compatible with development in the vicinity. I do not consider that there would be significant adverse impacts on the amenities of the established residents and I do not consider that the development of four apartments would generate significant additional vehicular traffic that would culminate in any traffic hazard for residents.

#### *Appropriate Assessment*

The site of the proposed development is an established residential estate within the town of Charleville. It is several kilometres north of the nearest European site which

is the Blackwater River (Cork/Waterford) SAC. Having regard to the nature, scale, and the location of the proposed development within an established housing estate, the nature of the receiving environment, and the separation distance to the nearest European sites, it is concluded that no appropriate assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European site.

## **8.0 Recommendation**

- 8.1. I recommend that per mission is granted in accordance with the following reasons, considerations and conditions.

## **9.0 Reasons and Considerations**

Having regard to the planning history of the site and to the design, form and layout of the proposed development, it is considered that the proposed development, subject to the conditions set out below, would not adversely impact on the residential amenities of adjoining properties or adversely affect the character of the established residential area, would be acceptable in terms of traffic safety, and would otherwise be in accordance with the provisions of the Fermoy Municipal District Local Area Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and with the further information received by the planning authority on 9<sup>th</sup> March, 2021 and the clarifications of further information received on 6<sup>th</sup> and 28<sup>th</sup> 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.

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

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

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

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

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

4. The applicant or developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.

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

5. The site shall be landscaped and all site boundary treatment shall be provided in accordance with a scheme to be approved in writing with the planning authority prior to the commencement of development.

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

6. Prior to the commencement of development, the developer shall agree in writing with the planning authority the recording of the existing masonry wall proposed to be impacted by the proposed development.

**Reason:** In order to protect the archaeological heritage of the area.

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

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

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

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

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

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

10. 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 and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space, landscaping 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 or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and

the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

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

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

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Kevin Moore  
Senior Planning Inspector

9<sup>th</sup> December 2021