



An
Bord
Pleanála

Inspector's Report ABP-310873-21

Development	Construction of 4 houses
Location	Riverside, Newtown, Garryduff, Co Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	201041
Applicant(s)	Declan McGrath.
Type of Application	Permission
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	First Party v Conditions 2 and 14
Appellant(s)	Declan McGrath.
Observer(s)	None.
Date of Site Inspection	8 th February 2022.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to an urban infill site located at Riverside, Newtown, Garryduff, Castlebar. The appeal site has a stated area of 0.056 hectares and comprises a former builder's yard which lies to the rear of a dwelling fronting onto Newtown / Newport Road while the appeal site fronts onto Marian Row Riverside to the west. The appeal site is currently occupied by hardstanding and a shed / warehouse type building measuring 220 sq.m. The frontage onto Riverside is defined by high walling. A right of way serving rear yards of residential dwellings on Marian Row adjoins the northern boundary of the appeal site.
- 1.2. The site is centrally located a short distance from the town centre and adjacent to a number of schools and public amenities. The area is characterised by tight grain residential development interspersed with commercial development

2.0 Proposed Development

- 2.1. The application involves permission for four no two storey, two bed town houses, together with all associated demolitions, and all ancillary siteworks, services, landscaping and parking. The terrace of proposed dwellings extends across the full width of the site (north south) with gardens to the rear and parking and lawn area to front / west. The dwellings adopt a traditional design approach with painted render walls and blue black slate pitched roof.
- 2.2. In response to a request for additional information some modifications were made to the proposal to increase private open space and mitigate overlooking concerns.

3.0 Planning Authority Decision

3.1. Decision

By order dated 25th June 2021 Mayo County Council issued notification of the decision to grant permission and 14 conditions were attached which included the following of particular note. (those subject of the first party appeal)

Condition 2. House 1 (southernmost) shall be omitted from the development. The complex shall consist of 3 dwelling houses only. Final ground floor plans elevations

and sections and site layout and boundary treatment details shall be submitted for written agreement.

Condition 14. Contribution in accordance with the Contribution Scheme

Amenities	€1071
Roads	€4557
Footpaths	€714
Community Open Space and Recreational Facilities	€1071
Surface Water	€1788
Cash Deposit	€12,000

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report sought additional information to include an increase in private open space provision to minimum of 50 sq.m as required by the development plan, details of boundary treatment. Applicant was advised that as unit 1 impinges on the private amenity space of the dwelling immediately south and gives rise to overlooking it should be omitted from the scheme and the layout revised accordingly.

Final planner's report maintains that house 1 impinges on private amenity space of the existing dwelling to the south and results in overlooking. Noting that the development breaks the existing building line to the north and that 3 of 4 units are below the required 50sq.m private open space (as required by section 14.4.3 of the Castlebar and Environs Development Plan (incorporating variations 1-5) as extended.) The omission of unit 1 and reconfiguration of the layout could ensure that building line is maintained and minimum private open space area met. Permission was recommended accordingly.

3.2.2. Other Technical Reports

3.2.2.1 Report of Executive Architect considers four units to be excessive. Unit 1 is compressed into the southern portion of the site and tight up to the rear elevation of the existing dwelling fronting onto Netown. This will negate the aspect of the

occupants of the dwelling and impinge on its private amenity space provision. Unit 1 may also overlook the private area of the adjoining dwelling. Question whether the proposal to break the building line set by Marian Row has merit over and above reducing private amenity space provision to the rear.

3.2.2.2 Senior Executive Planner Flood Risk Assessment Report – no risk of flooding at this site.

3.3. **Prescribed Bodies**

No submissions.

3.4. **Third Party Observations**

Submission from Mr Jack Loftus, 1 Marian Row concerned with regard to the height of the external boundary wall 1.8m given that site levels rise. Right of way on laneway should be maintained during construction. Section of the existing wall should be retained for security reasons and would support a gate pillar.

4.0 **Planning History**

I am not advised of any planning history on the appeal site.

5.0 **Policy Context**

5.1. **Development Plan**

The Castlebar Town and Environs Development Plan 2008-2014 as varied and extended refers. The site is zoned Existing Residential Infill where the objective 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. Natural Heritage Designations

The site is not within a designated area. The nearest such site is the River Moy SAC circa 4.3km to the northeast of the site.

5.3. EIA Screening

5.3.1 An Environmental Impact Assessment Screening report was not submitted with the application. 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.)

5.3.2 It is proposed to construct 4 dwellings. The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of 0.056 ha therefore well below the applicable threshold of 2ha in the case of a business district or 10ha in the other parts of the built-up area. The site is located within an established residential area. The introduction of infill residential development will not have an adverse impact in environmental terms on surrounding land uses. It is noted that 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 European Site and there is no hydrological connection present such as would give rise to significant impact on nearby water courses. The proposed development 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 Mayo County Council, upon which its effects would be marginal.

5.3.3 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 on lands within the existing built-up area under the provisions of the Castlebar Town Development Plan 2008-2014 as extended, and the results of the strategic environmental assessment of the Castlebar Town Development Plan 2008-2014 as extended, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site within the existing built-up urban area, 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) and the mitigation measures proposed to ensure no connectivity to any sensitive location,
- 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),

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 an environmental impact assessment report for the proposed development 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 appeal is submitted by The Planning Partnership on behalf of the first party. The appeal relates to conditions 2 and 14. Grounds of appeal are summarised as follows:

- Decision of the Planning Authority seeks the greatest setback to the northern building line disregarding the southern building line and existing site boundary. This is inappropriate, unnecessary unsupported by Planning Policy and leads to an excessively constrained site.
- Corner building to the south should predominate in terms of reference point for the new development while the existing boundary wall along the site establishes the de facto building line. Proposal will considerably open up the street and provide significant visual improvement.
- Condition 2 requiring the omission of one dwelling is a disproportionate response to the issue of building line with inconsequential and / or resolved issues of private open space and overlooking.
- Upholding the condition in its current form would necessitate a fundamental reconsideration of the redevelopment of the site in an apartment format as such an approach would have greater design flexibility.
- Building line will not change to any demonstrable extent as a result of omission of a dwelling. Proposal follows the existing building line to the south, which forms the corner of Newport Road Marian Row and is the primary / dominant building line in the context of the site.
- Proposal will bridge the transition between Marian Row and dwelling to the south while providing an enhanced streetscape to the site frontage. Proposal appropriately balances the existing vernacular pattern whilst delivering a reasonable scale of development on the site.
- Revised building line would not serve any useful purpose with regard to private open space provision.
- Concerns regarding overlooking were fully addressed at further information stage through internal layout and fenestration redesign to unit 1.
- Rationale for the omission of unit no 1 is insufficient with no substantive benefit.
- Site has capacity for the development and examples in the area demonstrate the appropriateness of high density infill development. (ABP301762-18, ABP307229-20)

- Overly rigid application of greenfield/ housing estate standards should not prevent reasonable infill development.
- Nature of the development as smaller households (two bed units of 85-86sq.m.) represents an alternative to apartment living in a central location and in a townhouse configuration and should not be judged against low density semi-detached accommodation.
- Propsoal as submitted at further information Stage is wholly compatible with development plan standards and there is only minor and inconsequential under provision of open space.
- Regarding condition 14 contribution of €9201 for 3 dwellings is significantly in excess of what is considered fair and reasonable, and contrary to the appropriate application of the terms of the General Development Contribution Scheme.
- Mayo County Council have applied the Mayo County Council Development Contribution Scheme 2004 rather than the properly applicable Castlebar Town Council Development Contribution Scheme 2011. The Planning authority have not given appropriate credit for existing uses of the site.
- Deposit / security for completion requirement is unwarranted in this case.
- The amalgamation of the Town Council into the County Council functional area does not render the Town Council Contribution scheme redundant, rather it remains in force along with other instruments of the Town Council adopted prior to its abolition/amalgamation.
- The Board has confirmed that the Town Council Scheme applies in such instances as established in ABP302292-18 and ABP305019-19
- Section 251(a) of the Local Government Reform Act 2014 states that “All acts done, and decisions duly made, whether by resolution, manager’s order or otherwise, before the transfer date in respect of a Town Council shall, subject to this act, continue to have all such force and effect as they had immediately before this date.”
- The Town Council Contribution Scheme has not been repealed or otherwise superseded. The County Council Contribution Scheme dates from 2004 and was

formulated based on exclusion of development and infrastructure within the town Council functional area and hence has no applicability.

- The County Council has effectively inherited the Town Council Scheme and it operates in parallel with the County Council scheme, each having its own geographic area as is facilitated by Section 48 of the Planning and Development Acts 2000-2020 wherein a planning authority may have multiple Section 48 schemes in operation.
- Only when the Planning Authority adopts a new development contribution scheme for the County would the previous County and Town Council schemes be superseded.
- The requirement to pay a cash amount of €12,000 upfront represents an unnecessary imposition to the viability of the proposed development. Deposit or bond typically relates to larger housing developments rather than small infill schemes.
- It is proposed that a revised contribution for 4 dwellings based on a reckonable net increase of 1.8 dwellings where applicable. €2034

6.2. **Planning Authority Response**

The Planning Authority did not respond to the grounds of appeal.

6.3. **Observations**

No submissions.

7.0 **Assessment**

- 7.1. Section 139 of the Planning and Development Act 2000 as amended provides that where an appeal is made to the Board against only a condition or conditions of a permission and where the Board is satisfied that a de novo assessment of the appeal is not required, the Board may issue a direction to the Planning Authority

relating to the attachment, amendment, or removal of the condition. In the case of the current appeal against conditions 2 and 14 of the decision, I am satisfied that the appeal accords with the criteria of Section 139 and therefore I restrict my assessment of the appeal to conditions 2 and 14 only.

7.2. **Condition 2** is as follows:

“House 1 shall be omitted from the development. The complex shall consist of 3 dwelling houses only. Final ground floor plans, elevations and sections and site layout plan 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 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. “

7.3. The first party contends that the omission of dwelling 1 is unjustified and unnecessary and is inappropriate given the central location of the site and the policy context which would seek to promote densification within this centrally located and fully serviced urban area. It is noted that the Planner’s report sets out that the omission of the dwelling could enable reconfiguration of the site layout to maintain the building line established by Marian Row to the north and to provide for increased private open space to the dwellings to achieve the minimum 50 sq., m requirement as set out in the Development Plan. (Although I note that the condition does not specify these requirements as such). The first party contends that the infill nature of the site, and nature and scale of dwelling accommodation proposed would warrant a degree of flexibility with regard to the achievement of minimum private open space requirements. It is further contended that the adoption of the building line established by the dwellings along Marian Row to the north is inappropriate and that it is more appropriate to adopt the building line established by the two storey corner property to the south. It is asserted that the proposal will achieve a significant improvement in terms of an enhanced streetscape within this central urban context.

7.4. I am inclined to concur with the first party that the site has capacity for the 4 dwellings as proposed and that it is appropriate to apply flexibility in terms of quantitative private open space standards having regard to the zoning and context of the site. As regards overlooking, I note the modifications to proposed dwelling number 1 in response to the request for additional information including provision of obscure glazing to the upper floor rear elevation to mitigate overlooking of the adjacent dwellings to the southeast. On the matter of the building line and the impact on streetscape, I consider that the proposal to adopt the building line established by the adjacent dwelling to the south is appropriate and the design in my view provides for an appropriate infill intervention to the streetscape. On balance I conclude that the proposal will result in the creation of four modern dwellings and thus makes better use of the zoned land. On the basis of the foregoing, I recommend the removal of condition 2.

7.5. **Condition 14** is as follows:

“A contribution shall be paid to Mayo County Council prior to commencement of development on the site. This development contribution shall increase in accordance with the 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

Amenities	€1071
Roads	€4557
Footpaths	€714
Community Open Space & Recreational Facilities	€1071
Surface Water	€1788
Cash Deposit	€12,000

Reason: To comply with Mayo County Council Development Contribution Scheme.”

7.6 The Board, when adjudicating on appeals made under Section 48, is limited solely to considering whether or not the Development Contribution Scheme has been properly

applied. The calculation of the contribution as set out in the planner's report based on the Mayo County Council Development Contribution Scheme is set out as follows:

Category of Contribution	Amount of Contribution in € per unit
Amenities	357 x 3 = €1071
Roads	1519 x 3 = 4557
Footpaths	238 x 3 = 714
Community Open Space and Recreational Facilities	357 x 3 = 1071
Surface Water	596 x 3 = 1788
Cash Deposit	€4,000 x 3 = €12,000

7.6 The first party contends that the appropriate scheme is the Castlebar Town Development Contribution Scheme 2011 rather than the Mayo County Development Contribution Scheme 2004. To support this case reference is made to previous Board decisions ABP302292-18 and ABP305019-19. It is also noted that no allowance has been made for established use on the site. Finally, the first party also contends that a cash deposit is not appropriate given the nature and context of the site.

7.7 The Planning Authority did not respond to the grounds of appeal.

7.8 On the issue of the cash deposit I note that the Castlebar Town and Environs Development Plan 2008-2014 as amended, at Section 14.8.1 Contributions and Securities, provides that the planning authority will require developers to provide a security for the proper completion of proposals, with particular emphasis on large residential development. The security required will be linked to the quantity of roads, footpaths, lighting services and open space proposed. It is a requirement of the Plan (section 14.8.3 Management Companies) that only a cash deposit shall be accepted

as security/ bond for the proper completion of the development. The planning authority attached the requirement for payment of a cash security bond of €12,000 (€4,000 x 3) as part of the section 48 development contribution condition 14. I note that it is inappropriate to attach such a requirement as part of a condition 14 as such a requirement does not fall within the scope of the Section 48 Development Contribution Scheme. I furthermore consider that there is merit in the first party argument that the application of a security deposit is not warranted given the small scale, infill nature of the scheme. On this basis I consider that it is appropriate that the Board direct the Planning Authority to omit the cash security element from condition 14.

7.9. The appellant contends that the planning authority has incorrectly applied the terms of the Mayo County Development Contribution Scheme 2004 (charges updated 2007) whereas the applicable scheme is the Castlebar Town Development Contribution Scheme 2011. I note that neither scheme appear to be available on the Mayo County Council website, however the applicant has submitted a copy of the Castlebar Town Council Development Contribution Scheme (adopted 14 April 2011).

7.10 Based on the evidence before me I am satisfied that it is the Castlebar Town Council Development Contribution Scheme which applies. This is consistent with recent decisions of the Board ABP-302292-18 and ABP 305019-19. Section 48(2)(a) allows the planning authority to make one or more schemes in respect of its functional area, therefore the operation of separate Development Contribution Scheme for the County and former town council area is not incompatible with the legislation. As noted within the first party appeal the Local Government Reform Act 2014, dissolving town councils, including Castlebar Town Council, provided (section 25) 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. On this basis the Castlebar Town Council Development Contribution Scheme will not have ceased to have effect by virtue only of the dissolution of the town council. In this regard, the Board has received no notification of a replacement Development Contribution Scheme for the

former town council area, and I am therefore satisfied that the Castlebar Town Council Development Contribution Scheme 2011 continues as the operative scheme for the subject area.

7.11 Schedule 1 of the Castlebar Town Council Development Contribution Scheme 2011 sets out the development contribution amounts. Section 2.2 states that in determining the amount of contribution, Castlebar Town Council has had regard to the actual estimated cost of providing the classes of specific infrastructure. Section 4 states that the council at its own discretion may allow the payment of a reduced rate where the payment of the contribution would not be just and reasonable having regard to the limited extent of development, the limited cost of the development and other exceptional considerations. The amount payable for any reduced contribution under this scheme shall not be less than one quarter of the amount indicated in column 2 of schedule. Section 7 states that no later than 5 years from the adoption of the scheme, Castlebar Town Council shall review the said Development Contribution Scheme.

7.12 The figure calculated by the appellant (para.3.5 of the appeal) proposes a revised contribution based on a reckonable net increase of 1.8 dwellings. The proposal is a contribution of €2,034. It is asserted that the crediting of existing floorspace/ uses is well established and is an inherent part of the contribution scheme noting that it is stated "For the avoidance of doubt the various categories of contributions are applied to a particular planning application only where they are relevant." The first party contends that as the scheme states that the "basis for the determination of the amount of contribution is GFA Commercial floor space as an equivalent number of dwellings based on 100m² per dwelling." The net additional development in respect of Amenities, Road Maintenance / Repair is 1.8 dwellings - 4 no proposed dwellings less 220sq.m of commercial floorspace (220/100 = 2.2). The community open space and recreational facilities and recycling facilities amounts are based on 4 no units as there are no corresponding commercial rate in the scheme for these categories.

7.13 I have reviewed the Castlebar Town Development Contribution Scheme and note that there is no specific provision of exemption or reduced contribution in respect of an established use. I note that there are no apparent records of a planning history on the appeal site therefore no evidence of previous contributions having been paid. In this light and having regard to the nature of the development I consider that it is appropriate that the full rates of all relevant categories of infrastructure should apply.

7.14 In view of connection charges which will apply for water related services levied by Irish Water I do not consider it appropriate to attach the rates for such services which are no longer provided by the council, and I note that no such charges were included in condition 14.

7.15 The first party notes that regarding footpaths and public lighting, the Castlebar Town Development Contribution Scheme charge is based on the actual intended provision by the local authority. As this does not arise in this case, I would concur that no such charge arises. The first party seeks to pursue a similar argument with respect to surface water infrastructure however as the scheme specifies this charge on a per dwelling basis therefore there it is appropriate to apply the charge in this case. As regards the Artistic feature category this only applies to residential schemes of 20+ houses and therefore it is not applicable in the current case. Having regard to the nature of the scheme the housing estate takeover category is also not applicable.

7.16 On the basis of the foregoing I calculate the contribution applicable in this case in accordance with the terms of the Castlebar Town Council Development Contribution Scheme 2011 to be as follows:

Category of Contribution	Amount of Contribution in € per unit	Rate Applicable
Water Services	900	N/A Irish Water Function

Sewerage Services	1350	N/A Irish Water Function
Surface Water Services	450	450 x 4 = €1800
Amenities	270	270 x 4 = €1080
Carparking	3150	N/A
Road Maintenance Repair	360	360 x 4 = €1440
Footpaths & Public Lighting	135 per linear metre where no land acquisition is involved. 180 per linear metre where land acquisition is involved	N/A
Artistic Feature	4500 20+ houses	N/A
Community Open Space and Recreational facilities	180	180 x 4 = €720
Recycling facilities	45	45 x 4 = €180
Housing Estate Take-over	180	N/A
Total		€5,220

7.17 As regards Appropriate Assessment having regard to the nature and scale of the proposed development in a fully serviced built up urban area, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

- 8.1. I have read the submissions on file, visited the site, and have due regard to the provisions of the Castlebar & Environs Development Plan 2008-2014 (as varied) and all other matters arising. Having regard to the nature of the condition the subject to the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below directs the said Council under Section 139 of the Planning and Development Act 2000 to **omit condition 2** and to **amend condition 14** as follows:

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, and the location within the built up urban area and to the pattern of development in the vicinity, and the zoning objective pertaining, it is considered that the proposed development would represent an appropriate densification of the site, would not impact unduly on the residential amenities of dwelling in the vicinity and would therefore be in accordance with the proper planning and sustainable development of the area.

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 14. It is considered reasonable, therefore, and in accordance with the provisions of this scheme to reflect the nature and scale of the proposed development and its location in Castlebar Town.

Condition 14

The developer shall pay to the planning authority a financial contribution of €5,220 (five thousand two 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 Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

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.

Bríd Maxwell
Planning Inspector
12th May 2022