



An  
Bord  
Pleanála

# Inspector's Report

## ABP-311526-21

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<b>Development</b>	Demolition of existing structures and construction of 36 two bedroom apartments.
<b>Location</b>	Davitt Road , Mountmellick , Co. Laois
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	20620
<b>Applicants</b>	Carrigeen Builders
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Davitt Court Residents Committee; The Board of Management of Scoil Phádraig Naofa National School
<b>Date of Site Inspection</b>	21 <sup>st</sup> February 2022
<b>Inspector</b>	Dolores McCague

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## 1.0 Site Location and Description

- 1.1.1. The site is located at Davitt Road, Mountmellick, Co Laois, between a school and a housing estate. It is rectangular in shape with the narrow axis along the road and extends in a north-east to south-west direction from the road, to lands and a stream at the rear. Single houses on individual sites front the road on the opposite side. The site is flat for most of its extent but a drop, in excess of a metre, occurs close to the rear. Lands to the rear are on the bank of a stream. The site is bounded to the north-west and south-east by drains, holding water on the date of inspection. Land to the rear was experiencing some flooding on the date of inspection and there were extensive areas of flooding in the general vicinity of the town.
- 1.1.2. The site is currently occupied, towards the front, by an industrial type building set behind an area surfaced in broken stone. To the rear of the building the site is rough ground covered by rank grass. Towards the rear of the site, various materials are scattered on top of the grass, comprising plastered blockwork, plastic fittings, metal etc: building demolition waste. Other material is elsewhere exposed beneath the grass and much of the site has the feeling underfoot of jagged or loose, deposited material.
- 1.1.3. The site is given as 0.9369ha.

## 2.0 Proposed Development

- 2.1.1. The proposed development is the demolition of the existing structures and construction two-bedroom apartments. The application as originally presented to the planning authority was for the construction of 36 two-bedroom apartments. The revision to 32 apartments was necessitated by the need to move the development out of the flood zone.
- 2.1.2. The application details include – a letter of agreement from Laois Co Co Housing Section re. Part V agreement: to accept 3 ground floor apartments.
- 2.1.3. The blocks are all two storey, flat roofed with an angled feature extending upwards. In the application as originally presented to the planning authority (27<sup>th</sup> November 2020) the development was in 8 discrete blocks described as Units:

Unit A (4 apartments) of which 2 were proposed (one a handed version), has forward projections at either end, the larger one comprising a bedroom, the access and stairwell, and a storage area, the smaller comprising a portion of the access/stairwell. The 'Unit' is divided centrally into two and each division/sub-block has its own front door accessing two apartments, one at ground and the other at first floor. Balconies to each apartment, to front and side, at both ground and first floor, are accessed from either the living room or hallway. The overall height is from 6.608m to 6.744m (angled portion), and the overall floor area of each floor is 190m<sup>2</sup>.

Unit B (2 apartments) of which 2 were proposed (one a handed version), is similar to one of the divisions of Unit A, with the smaller forward projection, balconies are to front only. There is a single apartment at first and second floor. Each floor comprises 92.3m<sup>2</sup>.

Unit C (4 apartments) of which 3 were proposed, is a double block, 186.6m<sup>2</sup> on each floor, divided centrally into two, each division having a front door accessing two apartments, one at ground and the other at first floor. The small central projection is like a double of the smaller projection to Unit A comprising a portion of the access/stairwell areas. Balconies are to the front only.

Unit D (12 apartments) of which 1 was proposed, is a composite of the two apartment sub-block types, adapted to provide a corner unit in a right-angled shape at the western end of the site with balconies to front and rear.

With the exception of Unit D all units face towards the access road, i.e. south east.

All apartments are provided with balconies, there is otherwise no dedicated private open space at ground level.

- 2.1.4. Revised building plans were provided during the course of the application, which have only two building types including a handed version of each. Each building is of two storeys with a flat roof. The smaller, Unit B, (4 apartments) of which 2 were proposed (one a handed version), with the exception of some small modifications to one first floor balcony, is almost identical to Unit A of the original proposal. Both Units face the access road and are located between a block of Unit A at either end. Unit A of the revised proposal (12 apartments) of which 2 were proposed (one a handed version), is divided into 6 divisions by dividing walls. Each division has an access doorway serving an apartment at ground and first floor. The blocks generally

face the access road but with ends which project towards the access road facing each other across a parking/services area. The projecting end divisions comprise an apartment at ground and first floor. One of the end divisions incorporates a curved corner. The 570m<sup>2</sup> floor plan (x 2 floors) provides 6 units on each floor: 12 units. Unit A is proposed nearest the roadside entrance to the site, forward of the previous proposal as viewed from the road, and a second Unit A is proposed farthest from the road, but not at the rear of the site, which is now shown as a green area.

2.1.5. The application was accompanied by:

DKA Architectural Technologist:

Drawings - Site layout and building drawings and including a site survey plan (4510-PP-11)

A Design Statement,

Site Statistics, and

Schedule of Accommodation and Housing quality Assessment,

Kilgallen & Partners Consulting Engineers:

Drawings

Irish Water Infrastructure, and

Surface Water Drainage and Streets.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. The planning authority decided to grant permission subject to 20 conditions, including:

3 Foul effluent shall be collected and discharged to the public foul sewer. Prior to the commencement of development, the developer shall obtain a Connection Agreement and Confirmation of Feasibility from Irish Water statutory body in this regard and submit them to the planning authority for its written agreement.

6 d) all upper floor rear and side bathroom and landing window opes shall be fitted with frosted/opaque glass.

Reason: In the interest of visual and residential amenity and the orderly and harmonious development of the area.

14 c) the developer shall submit written details of an annual maintenance contract, for the written agreement of the Road Design Section, in respect of the permeable paved area within the site curtilage to ensure the drainage system is working effectively.

e) the diameter of the proposed 600mms pipe for the open drain along the north-western boundary shall be increased in accordance with the requirements of the Road Design Section with whom precise details shall be submitted to and agreed in writing prior to commencement of development. Precise details of the type and locations of access chambers along the pipe to allow for maintenance shall be submitted to and agreed in writing with Road Design Section prior to commencement of development.

19 the new buildings shall incorporate the provision of swift boxes either recessed into the new buildings or externally on the walls. The works shall be carried out under the guidance of a suitably qualified ornithologist as agreed in writing with the planning authority prior to commencement of development. A minimum provision of 12 no. nest boxes shall be allowed for.

Reason: To facilitate the expansion of the swift colony in Mountmellick (swifts are red listed on the Birds of Conservation Concern in Ireland 2020-2026), in the interests of nature conservation, biodiversity and proper planning.

3.1.2. The decision was in accordance with the planning recommendation.

## **3.2. Planning Authority Reports**

3.2.1. Planning Reports

3.2.2. There are two planning reports on the file. The first, 21<sup>st</sup> January 2021, recommending a request for further information, includes:

3.2.3. Site is zoned residential 1, existing residential, objective to protect and improve the amenity of developed residential communities. Apartments are deemed normally acceptable. 30% of the site is within flood zones A and B.

- 3.2.4. Apartment standards are met with exception of ground level apartment floor to ceiling heights – 2.4m proposed, 2.7m required. Density of development 37.38 units per hectare or 15 units per acre – it should be 30 per acre in Mountmellick.
- 3.2.5. The second planning report, 13<sup>th</sup> September 2021, recommending permission includes:
- 3.2.6. Responses are acceptable.
- 3.2.7. Other Technical Reports
- 3.2.8. Housing, 9<sup>th</sup> December 2020 – no objection, Part V agreement in place.
- 3.2.9. Fire Officer – 9<sup>th</sup> December 2020 - vehicle access route from the public road to within 20m of the entrance to each apartment should meet Standards of section 5.2 and table 5.2 of Technical Guidance Document Part B.

Fire brigade should be able to get within 45m. Access route to meet B5(5.2) of Technical Guidance Document (TGD) Part B Fire Safety.

Every building having a ground floor area of more than 1000m<sup>2</sup> (or group of buildings) should have at least one hydrant per 100m<sup>2</sup>, round thread type, fed from a water supply sufficient to achieve a combined flow rate of 20 litres per second from any two hydrants simultaneously. Hydrants located in accordance with section 5.1.7 and diagram 30 of TGD Part B.

- 3.2.10. Area Engineer – 10<sup>th</sup> December 2020 – care re. surface water runoff to avoid flooding, and surface water runoff to roads. There are adequate sightlines.
- 3.2.11. Roads Design – 11/01/2021 – further information:
  - Road Safety,
  - Parking,
  - Turning Facilities,
  - Traffic volume and construction traffic,
  - Public lighting,
  - Drainage,
  - Details of bollards,
  - Details of oil petrol interceptor.

Re. drainage – the applicant has indicated that they are proposing to discharge the surface water from the proposed development to the existing drain to the rear of the development. The applicant shall demonstrate that the existing drain network within this area has the capacity to cater for the additional loading generated by this proposed development, therefore the applicant is requested to submit details of the following:

Flood history of the watercourse to include:

- i) known peak water levels in the watercourse channel,
- ii) physical evidence of flooding and overtopping of watercourse channel,
- iii) any erosion of watercourse upper banks,
- iv) local knowledge about flooding of adjoining crop or grass fields.

3.2.12. Waste Management & Environmental Protection, 19/01/2021 – further information:

Detailed construction waste & demolition management plan.

Detailed construction management plan

Revised layout to address:

- Sufficient communal storage for three bin system, access for waste collectors and proximity to apartments, and capacity for washing down.
- Communal storage area to satisfy the three-bin system, provision for sufficient access of waste collectors, proximity of or ease of access to waste storage areas from individual apartments, including access by disabled people. Waste storage areas should not present any safety risks to users and should be well lit, should not be on the public street and should not be visible or accessible by the general public and should have capacity for washing down waste storage areas, with wastewater discharging to the public sewer.
- Details of signage, visual screening and lighting associated with any proposed waste and recyclable material storage areas.

### 3.3. Prescribed Bodies

- 3.3.1. IW, 14<sup>th</sup> January 2021 – the sewer network in this area of Mountmellick is constrained. The applicant is required to engage with Irish Water through the



submission of a Pre-Connection Enquiry (PCE) in order to determine the feasibility of connection to the public water/waste water infrastructure. The confirmation of feasibility (COF) must be submitted to the planning department as the response to this further information request.

3.3.2. Dept of Culture, Heritage and the Gaeltacht – 11/01/2021 – condition predevelopment testing.

3.3.3. Dept of Housing, Local Government & Heritage – 03/08/2021 – new building should incorporate provision of Swift nest boxes. There are several Swift colonies in Mountmellick.

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

3.4.1. Third party observations have been read and noted. Issues raised include:

- Proximity to Scoil Phádraig Naofa, the girl's national school is immediately adjacent with a current enrolment of 251, the two schools have a combined enrolment of almost 500. Overlooking of playground from units at 2.427 to 3.573m away.
- Traffic concerns.
- Existing houses along Davitt Road / Connolly Street & Lord Edward Street previously flooded internally with sewage due to surcharge of the existing combined sewer into their homes. The internal flooding occurred in December 2015 / January 2016 to properties close to the junction of Lord Edward Street & Connolly Street. A number of properties subsequently had non-return valves fitted on their sewer services connections. In November 2017 a number of properties further upstream on Davitt Road were severely flooded internally by the same means. This flooding occurs in periods of heavy rain and is a result of a capacity issue in the sewer network in this general location. Irish Water have indicated that the existing sewer network in this area of Mountmellick is constrained. The applicant has not indicated any intentions to upgrade or carry out any necessary works to the existing system to alleviate any potential issues.
- The flood risk submitted is inadequate. It should address the site specific risk and the 2017 flood event in Mountmellick.

- Broc view flooding.
- Density and over development.
- Apartment development – two storey demi detached houses would be more appropriate.

### 3.5. Further Information

- 3.5.1. A further information request issued 26/01/21 on 13 points: IW, road safety, car parking requirement, turning facilities, traffic volume and construction traffic, public lighting, flood risk, drainage, public open space, asbestos, dumping, apartment standards and requesting comment on observations. The request includes – re. dumping - has the subject site been subject to dumping of waste and refuse in the past or has it been filled? In this regard the planning authority notes its terrain relative to lower adjoining lands due south-west. Submit relevant details. Re. drainage – the applicant has indicated that they are proposing to discharge the surface water from the proposed development to the existing drain to the rear of the development. The applicant shall demonstrate that the existing drain network within this area has the capacity to cater for the additional loading generated by this proposed development, therefore the applicant is requested to submit details of the following:

Flood history of the watercourse to include:

- i) known peak water levels in the watercourse channel,
- ii) physical evidence of flooding and overtopping of watercourse channel,
- iii) any erosion of watercourse upper banks,
- iv) local knowledge about flooding of adjoining crop or grass fields.

### 3.6. FI response

- 3.6.1. The response to the FI request received 19<sup>th</sup> July 2021 included:

A revised site layout and building drawings from Dan Keane Architectural Technician; and drawings: streets and surface water drainage (20111 C DR 01); layout for Irish Water Infrastructure Longitudinal Sections through sewers (20111 C DR 02); swept paths for design vehicles (20111 C DR 03); and standard details

section through storage tank (20111 C DR 04), from Kilgallon & Partners Consulting Engineers.

Reports from:

DP Keane Architectural Technician response to FI request.

Outdoor Lighting Report ASD Lighting Plc.

EVbox manual for installation of electric charging points.

IW pre connection enquiry form.

Stage 1 Road Safety Audit – Bruton consulting engineers.

Kilgallon & Partners Consulting Engineers – response letter including traffic count, and flood risk and drainage response.

3.6.2. The response includes – the site has been used for infill of in-earth material in order to raise the rear of the site. This was carried out by the previous owner and the applicant has got assurances for same that the material is based on sub-soil, topsoil, in-earth material from builder's rubble.

3.6.3. The response also includes:

- Stage 1 road safety report. Identified issues excessive corner radii – to be reduced; proximity to school and possibility of parking on the carriageway with in visibility splay – double yellow lines; parking on footpath – provide bollards and take this into account in the width of the footpath; ponding at the speed tables – gullies to be provided. The report notes issues with background mapping. All recommendations have been accepted by the design team.
- Consulting Engineers response – including a traffic count which was carried out on Davitt Road at the location of the proposed access on Tuesday 29th June 2021, 7am to 1pm.
- Re. the open drain at the northwest boundary into which the attenuated surface water run-off from the proposed development will discharge. It is proposed to pipe the drain using 600mm diameter pipe, this will provide the hydraulic capacity required to convey discharge from any small diameter pipes that may currently enter the open drain and for the attenuated discharge from the proposed development which is restricted to a maximum rate of 5.0 lit/sec.

- Re. flood risk Section AA drg no. 20111-C-DR-02 shows the existing ground level, proposed finished level, water levels predicted by CFRAM for the 1% AEP and the 0.1% AEP flood events, equivalent to the water levels associated with Flood Risk Zones A and B respectively. Applying the precautionary principle the water levels are taken from a point upstream of the site (node 14 CLOT00174 on the enclosed CFRAM map). The section demonstrates that the proposed buildings and streets are located in areas of the site above both the 0.1% AEP and 1% AEP water levels and so do not encroach on Flood Risk Zones A & B and will not displace floodplain storage within these zones.
- In order to ensure that elements of development of the site, not compatible with water i.e. roads, buildings etc, are not at risk of flooding, the OPW Flood Risk Management Guidelines recommend floor levels and road levels to be kept above the 1% AEP flood level with an appropriate allowance for freeboard, in this regard a freeboard of 500mm is appropriate for floors and a freeboard of 250mm is appropriate for roads.
- As shown on Section A-A the peak water level for the 1% AEP event is 73.69m. The minimum proposed road level is 74.88m and the minimum proposed floor level is 74.10m and therefore the minimum appropriate freeboard is provided.

3.6.4. Drawings indicate existing and proposed ground levels.

### 3.7. Reports post FI response

3.7.1. Housing, 23<sup>rd</sup> July 2021 – no objection, Part V agreement in place.

3.7.2. Fire Officer – 23/07/2021:

No objection in principle,

Fire brigade should be able to get within 45m,

Access route to meet B5(5.2) of Technical Guidance Document Part B Fire Safety,

At least one hydrant per 100m<sup>2</sup>, fed from a water supply sufficient to achieve a combined flow rate of 8 litres per second from any two hydrants simultaneously.

3.7.3. Roads Design – 27/07/2021 – conditions:

Details of bollards;

Details of oil petrol interceptor;

Concern at the piping of the drain 600mm diam. and 2017 flood event, submit details, increase diameter, locations and details of access chambers;

Ducting for cables for EV charging;

Re. damage to public footpath;

Cleaning the road during construction;

Construction management plan;

Construction traffic management plan.

## 4.0 Planning History

None given.

## 5.0 Policy Context

### 5.1. Development Plan

### 5.2. The Laois County Development Plan 2017-2023

#### 5.2.1. This is the operative plan. Relevant provisions include:

Aim 1: Provide for the growth of County Laois towards a target population of up to 89,790 by 2023, this to be structured in a balanced manner between the Principal Town of Portlaoise (up to 25,382) and the county balance (up to 64,408), encompassing: [i] the consolidation of the Key Service Town of Portarlington, [ii] the measured growth of the five Service Towns [Abbeyleix, Graiguecullen, Mountmellick, Mountrath and Stradbally], two Local Service Towns [Durrow, Rathdowney], and villages of population not exceeding 800 and [iii] the maintenance of viable rural communities in the hinterlands of these towns and villages;

Table 5: Core Strategy Table includes for Mountmellick a requirement to 2023 of 27ha of residential land for an increase of 257 households.

DM03 Density of residential development - the number of dwellings to be provided on a site should be determined with reference to the document Sustainable

Residential Development in Urban Areas – Guidelines for Planning Authorities (2009). Within these Guidelines a range of residential densities are prescribed, dependent on location, context, scale and availability of public transport

### 5.3. **Mountmellick Local Area Plan 2018-2024**

5.3.1. The plan applies to this site. Relevant provisions include:

Land is zoned residential 1 – existing residential.

Objective NH O10 is to ‘maintain riverbank vegetation along watercourses and ensure protection of a 30 to 50 metre riparian buffer zone on Greenfield sites and maintain free from development.’

The LAP identifies approximately 18ha. of undeveloped residentially zoned land, located within and adjacent to established residential areas within the town. The housing capacity of these lands excluding infill sites within the built-up area is estimated to be approximately 252 (18ha. x 14 units per ha.) residential units, based on a density of 14 units per hectare. Over the lifetime of the LAP, priority for residential development should be given to the development of these lands, infill and backlands to consolidate the built up area of the town.

Apartment development:

‘Mountmellick may be suitable for apartment development subject to local determination, having regard to the following broad proximity and accessibility considerations: 1) Town Centre: Generally suitable for small scale infill (will vary subject to location) and higher density development (will also vary), that may wholly comprise apartments, and includes sites within the town centre. 2) Remainder of the town: Generally suitable for limited, small-scale (will vary subject to location) development that may wholly comprise apartments, or residential development of any scale that will include a minority of apartments at low to medium densities and sites in suburban development areas that do not meet proximity or accessibility criteria. These areas require local assessment that further considers these and other relevant planning factors. Apartments can allow for greater diversity and flexibility in a housing scheme, and allow for increased overall density. Accordingly, apartments may be considered as part of a mix of housing types in a given housing development at any urban location.’

Flooding:

‘Following the severe and unprecedented flooding in November 2017 Laois County Council has agreed in conjunction with the Office of Public Works (OPW) the urgent commencement of detailed design and engineering specifications for flood defences in Mountmellick. The detailed design will include a review of the Catchment Flood Risk Assessment and Management mapping (CFRAM) taking into account the recorded flood depths on 22nd November 2017 and the identification of any additional flood defences necessary.’

Flood Risk Assessments will be required to be carried out for specific new development in all areas at risk of flooding to ensure that the development can be adequately managed.’

Including - Examine the potential impact on flood risk elsewhere (particularly displacement impacting on capacity issues elsewhere in the watercourses/drainage channels).

#### **5.4. Strategic Flood Risk Assessment**

5.4.1. A strategic flood risk assessment was carried out as part of the Mountmellick Local Area Plan 2018 – 2024.

5.4.2. It includes:

The recommendations proposed in this SFRA for dealing with flood risk in Mountmellick are based on the general policy approach to flood risk as well as national guidance based on best planning principles for managing flood risk:

Identify Flood Risk at an early stage in the planning process.

AVOID or minimise development in areas at risk of flooding.

Permit development in areas at risk of flooding ONLY where there is no alternative or reasonable site available in areas at lower risk.

Select an appropriate land use where development is necessary in areas at risk of flooding.

A precautionary approach to be taken to reflect uncertainties in flood datasets, to provide for climate change and performance of flood defenses. Development should

be designed with consideration of possible future changes in flood risk including the effect of climate change.

Land required for current and future flood management e.g. Conveyance and storage of flood water and flood protection schemes should be identified and safeguarded from development.

Flood risk to, and arising from new development should be managed through location, layout and design incorporating Sustainable Drainage Systems and compensation for any loss of floodplain should be compensated for elsewhere.

## **5.5. Natural Heritage Designations**

- 5.5.1. The nearest Natura site is the River Barrow and River Nore SAC (site code 002162), located less than 200m downstream.

## **5.6. EIA Screening**

- 5.6.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

- 6.1.1. Two third party appeals against the planning authority's decision to grant permission have been submitted.
- 6.1.2. Fitzgibbon McGinley Architects have submitted a third party appeal on behalf of the Board of Management of Scoil Phádraig Naofa National School, against the decision to grant permission. It includes:
- Concern from a child safety point of view to proximity to the school and overlooking of the school grounds.



- The development plan standard requires 22m between opposing first floor windows, the distance of 2m from first floor windows is unacceptable, DM06.
- Per DM19 – should not have an adverse impact on the amenities of adjoining properties through undue overlooking, overshadowing and or over dominant impact. The proposal is a poor design response to a complex site configuration.
- The school is approx. 2.4-3.5m from the boundary with the adjacent site, the development directly overlooks the school entrance and the shared playground and impacts on the pupils' privacy and rights to child protection.
- Concerned re. traffic safety. Accessing the scheme via Davitt Court should be considered. The proximity of the entrance to the school entrance will compromise the safety of school users.
- Parking spaces 64 per cover letter, 60 per drawing, 62 per engineering drawing. An increased parking and traffic to the original proposal, with consequences for school-going children.
- The traffic count submitted, taken 29<sup>th</sup> June 2021, is misleading – the school closed for summer holidays on the 30<sup>th</sup> June, approx. 20% of pupils were attending orientation day in Mountmellick Community Centre.
- Many children had already taken school holidays.
- It only covered the period 8.00am to 1.00pm. The school traffic begins at 8.30am and the majority of pupils are in school before 9am.
- The afternoon collection starts at 1.45pm (junior and senior infants) and the remaining classes finish at 2.45pm. The relevant school traffic has not been picked up.
- Inclement weather always results in increased traffic volumes.
- At that time, many workers were still working from home due to COVID restrictions.
- The traffic count has been presented in complete isolation, with no analysis. There is no summary or conclusions in relation to the traffic count and in this context it is completely meaningless.

- Two road safety audit concerns – the response to provide double yellow lines and bollards. It makes no reference to school hours, the school pedestrian or vehicular movements or to the highly pedestrianised walk to the school which will have to traverse the site entrance to a development where 64 cars are proposed. There is significant traffic congestion at peak times, with many families cycling and walking to school.
- Mountmellick LAP states that there is potential for a modal shift from private car. These current proposals take no account of this.
- The traffic management plan has not been detailed and gives the school authorities no information. They request a condition with regard to the hours of operation of the entrance adjacent – the prohibition of the use of the entrance by construction traffic during specific school operation hours and the imposition of the appropriate limits on noise emissions being generated by construction activity on the site and related noise monitoring programme to ensure compliance.
- Density and overdevelopment – 18ha of undeveloped residential land within the town and infill sites, capacity for 252 units at 14 units per ha. ( $18 \times 14 = 252$ ). The current proposal is for 32 on 0.9639 ha = 33.1 units per ha. No justification for this overdevelopment. Overlooking and overbearing on the school. Redesign should be in line with development plan standards. At 14 units per ha, 13.4 units, max 14.
- Mix/variety – it is comprised entirely of 2 bed apartments, not family orientated. Per development plan couples with children and single parents account for 74% of households. The proposal is not suitable and does not tie with 'compact connected neighbourhoods', a key aim of the plan. The location has not been taken into account, per HO3.
- Type of development – 2 storey houses, as in Davitt Court adjoining, would be preferable. The proposal is a poor design response to a complex site configuration.
- Drainage concerns – the engineer's report that the open drain is dry and heavily overgrown, is accompanied by photographs which show water in the drain. It

states that there is no evidence of any pipes discharging into it, however it is possible that small diameter pipes may discharge to the drain but not be visible due to the overgrowth.

- Rainwater from the schools playing fields as well as from the 5 prefabs discharge to the drain. No account has been taken of this and no site specific flood risk assessment. No investigation of the capacity of the water course. The school opposes any proposals to interfere with this drainage / pipe the stream.
- There were no discussions with the school authorities.

6.1.3. Anthony & Elaine Ward have submitted a third party appeal on behalf of Davitt Court Residents Committee and Cllr Paddy Bracken, against the decision to grant permission. The grounds include:

- Flood risk zone.
- Privacy and child protection.
- Sewerage.
- Traffic safety.
- Dumping.
- Apartments not in keeping and not in accordance with the LAP.
- A full flood risk assessment has not been carried out to address all flood risks to the site and surrounding area and to address the devastating flood event which occurred in 2017. The capacity of the watercourse has not been addressed.
- Overlooking – from balconies of school and residences.
- Sewage facilities are already operating at capacity.
- Flooding and surcharging of combined sewer at houses along Davitt Road, vicinity of /Connolly St and Lord Edward St 2015/2016, and in Nov 2017 at houses on Davitt Road. The proposed development will place further pressure on the system. IW have indicated the network is severely constrained. The applicant has not indicated any intention to carry out any necessary works to address issues.
- Access – there is traffic congestion, particularly at peak times; the traffic count is unreliable.

- Dumping at the site for a number of years.
- Not in keeping with locality or LAP– 2 bed apartments – the other apartment development in Mountmellick, referred to by the applicant, has seen anti-social behaviour. We should be focusing on increasing jobs, (job seekers 15% compared to 8% for state). Need for job creation is referred to in the plan. Significant social infrastructural developments must happen in tandem with the provision of any new housing.

## 6.2. Applicant Response

6.2.1. DKA Architectural Technologist has responded on behalf of the applicant to the grounds of the appeals. The response includes:

- Zoned existing residential – apartments deemed acceptable. Focus on reusing previously developed sites. National Policy OBJ 3A.
- Projected increase in households per the core strategy for Mountmellick is 257.
- Infill urban site for apartment living, supports Rebuilding Ireland.
- Precedent – various precedents are cited in relation to proximity to schools, where it was not considered an issue.
- Traffic safety – it accords with DMURS, the road section is satisfied, it is on zoned land. No evidence has been presented with the appeal. Re. overallocation of parking, it is in accordance with development plan requirements. It will alleviate any potential negative impacts of parking along the road. There is a commercial premises operating from the site for a number of years and there are vehicles entering and exiting throughout the day and during school hours. The increase is minimal and capacity is in place.
- Building height and design – NPF chapter 4, NPO 13. Design changes requested during the course of the application were complied with. The separation distances are appropriate. There will be no overbearing issues with the existing dwellings or the school. Re. overlooking – it is an urban location and playgrounds are located in such areas. CDP references suitable location for childcare facilities, policy SOC 13, and these include within residential areas.

- It is within 1km of town centre – the sustainable residential guidelines recognise that higher densities should be promoted. The reference to a 2m separation between the development and the school playground is not a correct interpretation. There is a boundary wall and further screening potential. At first floor the balcony and other features are well beyond 2m.
- Infrastructure and flood risk – no objection from IW or the council. The site is served by public water and foul sewerage. Flood risk resulted in redesign, without impacting on the development or adjoining lands. A 297 cubic metre attenuation tank will be provided; buildings and streets are above the 0.1% AEP and 1% AEP and do not encroach on flood risk zones A & B or displace floodplain storage within these zones.

## 7.0 Assessment

7.1. The issues which arise in relation to this appeal are: appropriate assessment, flood risk, sewerage, landfilling, traffic, impact on the school, and residential amenity and the following assessment is dealt with under those headings.

### 7.2. Appropriate Assessment

7.2.1. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority in this case, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment.

7.2.2. The nearest Natura site is the River Barrow and River Nore SAC (site code 002162), located less than 200m downstream.

7.2.3. The qualifying interests are:

Estuaries

Mudflats and sandflats not covered by seawater at low tide

Reefs

Salicornia and other annuals colonising mud and sand  
Atlantic salt meadows  
Mediterranean salt meadows  
Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation  
European dry heaths  
Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels  
Petrifying springs with tufa formation  
Old sessile oak woods with Ilex and Blechnum in the British Isles  
Alluvial forests with Alnus glutinosa and Fraxinus excelsior  
Desmoulin's Whorl Snail  
Freshwater Pearl Mussel  
White-clawed Crayfish  
Sea Lamprey  
Brook Lamprey  
River Lamprey  
Twaite Shad  
Salmon  
Otter  
Killarney Fern  
Nore Pearl Mussel.

7.2.4. A NIS has not been submitted with the application.

7.2.5. The proposed developed is within a zoned and serviced area, however, from the information available on the file, the sewer in this area surcharges in flood conditions and this has occurred in the recent past. No evidence has been presented that this will not recur. It cannot be determined therefore, based on the information available on the file, that the proposed development would not contribute to effluent surcharge or that effluent from the proposed development would not discharge untreated to the SAC, which could impact negatively on water dependent qualifying interests.

7.2.6. From the information available on the file it is not possible to reach a definitive conclusion of no likely significant effects. The possibility of significant effects cannot be excluded on the basis of objective information, in such circumstances the Board is precluded from granting permission.

### 7.3. Flood Risk

- 7.3.1. The river Owenass which flows through Mountmellick is a tributary of the River Barrow and is subject to flooding. Part of the site is identified in the Mountmellick LAP as at risk to a 1 in 100 year flood, part of the site is at risk to a 1 in 1000 year flood.
- 7.3.2. The request for further information included information in relation to flooding, The response states that the proposed development does not encroach on Flood Risk Zones A & B and will not displace floodplain storage within these zones.
- 7.3.3. This fails to address the fact that ground levels within the site have been raised over recent years, in order to facilitate development of the site. In response to the request for further information, the applicant states that the site was infilled by the previous owner.
- 7.3.4. As can be seen from the Ordnance Survey aerial photographs (orthophotos) the site has been continuously subject to infilling since the earliest aerial photo available on their website, dating from 1995. Aerial photos show that filling has continued towards the rear, south-west, of the site over succeeding periods. There is no evidence that any of this work received planning permission or that the potential displacement of the floodplain storage by that infilling has ever been addressed. In my opinion this matter has not been satisfactorily resolved.
- 7.3.5. It is also noted that the proposed development involves raising the site by filling of up to 1m in places, from the levels shown in the site survey plan – drawing number 4510-PP-11, to the podium level referred to in the Design Statement (per drg nos 200111 C DR 01 and 20111 C DR 020).
- 7.3.6. In relation to flood impact on the proposed development, the building at the western end of the site, unit D, was omitted in response to the further information request re. flood risk and raising ground levels, and this area is to be used for parking and open

space. The site layout was revised with additional apartments located elsewhere within the site.

- 7.3.7. The response to the further information request states that the peak water level for the 1% AEP event is 73.69m. the minimum proposed road level is 74.88m and the minimum proposed floor level is 74.10m and therefore the minimum appropriate freeboard is provided. The necessary freeboard is stated to be 500mm for floors and 250mm for roads. At a level of 73.94m, the road as proposed adheres to the rule, but the minimum proposed floor level of 74.10m is below the minimum 74.19m required.
- 7.3.8. It is proposed to pipe the drain between the subject site and the school site, with pipes of 600mm diameter. The applicant states that this will provide the hydraulic capacity required to convey discharge from any small diameter pipes that may currently enter the open drain and for the attenuated discharge from the proposed development which is restricted to a maximum rate of 5.0 lit/sec.
- 7.3.9. Condition 14 e) of the planning authority's decision states that the diameter of the proposed 600mm pipe for the open drain along the north-western boundary shall be increased in accordance with the requirements of the Road Design Section with whom precise details shall be agreed in writing prior to commencement of development. Precise details of the type and locations of access chambers along the pipe to allow for maintenance shall also be submitted to and agreed in writing with Road Design Section prior to commencement of development.
- 7.3.10. The piping of the drain is raised in the grounds of appeal, wherein it is stated that the applicant's engineer's report, that the open drain is dry and heavily overgrown, is accompanied by photographs which show water in the drain. The grounds contend that small diameter pipes may discharge to the drain but not be visible due to the overgrowth and that rainwater from the schools playing fields, as well as from the 5 prefabs discharge to the drain, regarding which no account has been taken. It is also stated that no site specific flood risk assessment has been carried out and no investigation of the capacity of the water course. The school opposes any proposals to interfere with this drainage or pipe the stream.
- 7.3.11. I am not satisfied that the applicant's submission in response to the request regarding flood risk, provides a full assessment of the issue.



- 7.3.12. There is insufficient account of the existing or proposed infilling with regard to impact on flood plain storage and insufficient detail regarding the impact of piping the stream.
- 7.3.13. With regard to the latter issue, and the condition attached to the planning authority's decision, I concur with the planning authority's assessment that there is currently insufficient information available to allow the drain to be piped. Any information required to satisfy the planning authority should be available prior to decision, to enable all parties, including the school, which has an extensive boundary with the drain, to participate in the process and make observations.
- 7.3.14. In my opinion the issue of drainage and flood risk have not been satisfactorily resolved, either in relation to the surrounding land and properties, where flooding is a serious issue, or in relation to the proposed vulnerable development type - residential development, and this is a reason to refuse permission.

#### **7.4. Sewerage**

- 7.4.1. Connection to the public foul sewer is raised as an issue by third party appellants.
- 7.4.2. It is stated in an observation on the file that houses in the vicinity were flooded with sewage in 2015/2016, from the existing combined sewer surcharging into homes.
- 7.4.3. It is stated in the observation that flooding occurs in periods of heavy rain and is a result of a capacity issue in the sewer network in this general location; that Irish Water have indicated that the existing sewer network in this area of Mountmellick is constrained; and that the applicant has not indicated any intentions to upgrade or carry out any necessary works to the existing system to alleviate any potential issues.
- 7.4.4. Irish Water in a submission of 14<sup>th</sup> January 2021, on this application, stated that the sewer network in this area of Mountmellick is constrained. They requested that the applicant be required to engage with Irish Water through the submission of a Pre-Connection Enquiry (PCE) in order to determine the feasibility of connection to the public water/waste water infrastructure, stating also that confirmation of feasibility (COF) must be submitted to the planning department as the response to the further information request.

7.4.5. This did not occur. The applicant submitted a copy of a Pre-Connection Enquiry form with the further information response, but the results of consultation, the confirmation of feasibility, was not submitted. Irish Water did not comment on the further information response. Based on the documents on this file it is not reasonable to conclude that the sewerage network constraints have been addressed or that the proposed development could connect to the public sewer. In these circumstances permission should not be granted.

## **7.5. Landfilling**

7.5.1. It is stated that the site has been used for infilling. The applicant states that this was carried out by the previous owner, and that assurances were received that the material used for infilling was sub-soil, topsoil, and other inert material from builder's rubble.

7.5.2. No evidence has been presented regarding the infilled material. No information has been presented regarding the volume or depth of material imported.

7.5.3. No assessment can be made of the impact of imported material on the environment or on floodplain storage.

7.5.4. In my opinion the issue of the landfilling of the site and the nature of the fill material would need to be fully addressed before any further development could be permitted on the site.

## **7.6. Traffic**

7.6.1. The grounds of appeal refers to the impact of traffic. In particular there is concern regarding the safety of pedestrians and cyclists, particularly those accessing the school.

7.6.2. It is stated that the traffic count, taken during the pandemic, is not a reflection of the traffic experienced in the area. It is further stated that the traffic count has been presented in complete isolation, with no analysis; there is no summary or conclusions in relation to the traffic count and, it is asserted, that in this context it is completely meaningless.

- 7.6.3. I accept that the traffic count is likely to be unrepresentative of post lockdown conditions. I also accept that the lack of analysis limits the usefulness of the count as presented. However in the context of a zoned site within a town, which will not generate exceptional volumes of traffic, the traffic which will be generated is capable of being accommodated on the road network. Any additional measures required to ensure the safety of pedestrians and cyclists would be capable of being conditioned.
- 7.6.4. In my opinion traffic should not be a reason to refuse or modify the proposed development.

## **7.7. Impact on the School**

### Child Protection

- 7.7.1. The issue of child safety/protection/safeguarding is of concern to appellants. Grounds of appeal refer to concerns about child safety in the context of the proximity of the development, with first floor windows and balconies facing towards the school and the potential for overlooking of the school grounds and buildings.
- 7.7.2. In response the applicant states that there is precedent for residential development close to schools – various appeals decided by the Board are cited in relation to proximity to schools, where it was not considered an issue.
- 7.7.3. The proposed development could be considered unduly close to the school buildings and school grounds. It could be considered that the proposed development might impinge on the operation of the school, eg by the distraction to teaching/learning such close proximity to residential use could pose.
- 7.7.4. Schools are frequently located in residential areas and the uses are normally good neighbours. The appellants refer to their preference for semi-detached dwellings. The Board will note that the planning authority's decision includes a condition which would restrict the use of the development to owner / occupiers. This would limit short-term or transient residential use and would reduce any potential child protection concerns. In such circumstances a distinction should not be made between apartments and semi-detached houses. In my opinion child protection should not be a reason to refuse or modify the proposed development.

### Overshadowing

7.7.5. The proposed development although not unduly high, is very close to the common boundary with the school grounds. Information on the impact of the proposed development on the daylight and sunlight received by the school grounds and the windows of the school building, has not been provided, such as to facilitate analysis by the Board of this issue. This issue would require resolution before any such development could be permitted.

#### Construction Impact

7.7.6. It is stated in the grounds of appeal that the traffic management plan has not been detailed and the application gives the school authorities no information. They request a condition with regard to the hours of operation of the entrance adjacent, the prohibition of the use of the entrance by construction traffic during specific school operation hours and the imposition of the appropriate limits on noise emissions being generated by construction activity on the site and related noise monitoring programme to ensure compliance.

7.7.7. It is considered that construction impact is amenable to condition.

#### 7.8. Residential Amenity

7.8.1. The impact on residential amenity is raised in the grounds of appeal.

7.8.2. The main concerns raised in the grounds of appeal under this heading relate to the housing mix/variety – that it is unsuitable because it is comprised entirely of 2 bed apartments and is not family orientated; the proposal is a poor design response to a complex site configuration and 2 storey houses, as in Davitt Court adjoining, would be preferable. It is also pointed out that couples with children and single parents account for 74% of households; and that apartments are ‘not in keeping’ and not in accordance with the LAP.

7.8.3. The LAP for Mountmellick refers to apartments, stating that their suitability would be considered in the context of broad proximity and accessibility considerations:

- 1) Town Centre - generally suitable for small scale infill,
- 2) Remainder of the town - generally suitable for limited, small-scale development or as part of a mix of housing types.

- 7.8.4. The local area plan provisions would indicate that apartments should not comprise the entirety of the proposal. It is unclear why semi-detached or terraced housing was not incorporated in the proposal, given the two-storey design, although it is worth noting that back gardens are not being incorporated in the design<sup>1</sup> and in that regard private open space requirements are less onerous for apartments. In the context of the relatively small site, the selection of apartments as the form of the residential development is not a significant departure from LAP policy. The predominance of detached and semi-detached housing in the area suggests that apartments would provide a desirable addition to the mix, rather than an undesirable addition.
- 7.8.5. Density is referred to in the grounds of appeal as being excessive. The LAP makes reference to a density of 14 units per ha in calculating housing land availability. The County Development Plan refers to the standards in the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, where, for small towns and villages (range 400-5000 population) for edge of centre sites, densities to a range of 20-35 dwellings per hectare will be appropriate
- 7.8.6. The subject site is constrained by its shape and by flood risk but the proposed density is not considered excessive.
- 7.8.7. I am satisfied that apartment development would provide suitable residential accommodation at this location, and that the development as proposed does not impact negatively on the residential amenities of the area. Residential amenity should not be a reason to refuse or modify the proposed development.

## 8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that permission should be refused, for the following reasons and considerations.

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<sup>1</sup> Per the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas houses (terraced, semi-detached and detached) should have an area of private open space behind the building line.

## 9.0 Reasons and Considerations

1 Landfilling of the site, in preparation for development of the type proposed, has occurred up to recent times, and from the information available on the file the Board cannot be satisfied that the nature of the fill material does not impact on the environment or that the raising of land levels does on impact of flood risk by displacement of floodplain storage. The proposed development which does not take full account of the landfilling would accordingly be contrary to the proper planning and sustainable development of the area.

2 It is proposed to connect the proposed development to the public sewer in an area where the sewerage network is constrained, in the absence of documentary evidence of the suitability of connecting to the network, to permit the proposed development would be contrary to the proper planning and sustainable development of the area.

3 On the basis of the information provided with the application and appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No. 002162 or any other European site, in view of the sites Conservation Objectives.

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Planning Inspector

7th March 2022

### **Appendices**

Appendix 1 Photographs

Appendix 2 Laois County Development Plan 2017-2023 extracts

Appendix 3 Mountmellick Local Area Plan 2018-2024 extracts

Appendix 4 Mountmellick Local Area Plan Strategic Flood Risk Assessment extracts

Appendix 5 OSI.ie aerial photographs (orthophotos)