



An
Bord
Pleanála

Inspector's Report ABP-311662-21

Development	6 semi-detached houses
Location	Off Sandhill Road, Ballybunnion, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	21489
Applicant(s)	John Brown
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Tara Moran
Observers	None
Date of Site Inspection	1 st April, 2022
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The 0.2 hectare site relates to a grassed open space area centrally located in a new and substantially completed housing development off Sandhill Road at the southern end of Ballybunion seaside town.
- 1.2. The site is on the southern side of Fairways Drive (also shown as 'The Links' and faces a row of houses (including that of the appellant) that also front onto the road. The site otherwise backs on to housing. To the south, there are six single storey semi-detached houses along Gleann Na Mara in a sperate enclave backing onto the site. To the east, the site backs onto the side of a semidetached two storey house (no. 15 Fariway Green) that fronts onto a large green area.
- 1.3. The housing development pattern currently comprises a mix of single storey and two-storey houses centred around a series of open spaces and it is what I would describe as low density. The beach and open space is just east of the housing area on the opposite side of Sandhill Road.

2.0 Proposed Development

- 2.1. The proposed development, as amended in further information and subject of revised notices, comprises the construction of 6 semi-detached two-storey houses each with a stated floor area of c.117sq.m. square metres. The houses have a fairly typical uniform layout with 3 bedrooms over living accommodation.
- 2.2. The house sites are numbered as 12 – 17 inclusive (in a west to east direction.) They are provided with a paved area to the front and set back c. 8.5 from the edge of the carriageway with off-street carparking to the side for two cars and enclosed rear gardens. The rear gardens range in depth from c.10m (at the shallowest point from the rear building line to the rear boundary wall) to 33m at the deepest point reflecting the irregular site configuration. Green space is provided at each end (268 sq.m. and 374 sq.m. in addition to kerbside grass margin. The development would be served by mains water supply and public foul sewer.

3.0 Planning Authority Decision

3.1. Decision

Following the submission of further information as requested, the planning authority decided to grant permission for the proposed development on 17th September, 2021, subject to 14 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Report: In the initial planning report, while the principle of residential development on the site was considered acceptable, deficiencies in information were raised and were the subject of a request for further information. The report also noted the site's planning history, development plan provisions, internal technical reports, Irish Water's report, and third party submissions. Further information was accordingly requested in respect of:

- Site layout -as revised providing for Foul sewer layout and connections, Fire hydrant layout, boundary and landscaping details and off street car parking.
- Provision of housing mix having regard to Objective LS-R-07 of the Listowel Municipal District Local Area Plan.
- Location of all public open spaces
- Planning history of the site
- Reasoning for proposal having regard to the requirements for childcare facilities.
- Nature of objections
- Compliance with 22m opposing distance.

3.2.2. In response to the request for information the applicant submitted further details including a revised layout plan as described in section 2 of this report. Revised notices were sought in a letter dated 16th August 2021. The third party comments were further noted.

3.2.3. While noting that part of the site was the location of a permitted creche , it was noted that there are a number of creche and child care facilities in the area and that the applicant's comments in this regard were accepted. Having considered all issues raised it was concluded that the layout is an appropriate use of serviced land in the

town, that the proposal will integrate well with the existing housing development in the vicinity and that there is sufficient green common space for the existing housing . A grant of permission was recommended subject to conditions.

3.3. **Technical Reports**

Roads Report: No objection subject to conditions.

County Archaeologist: No survey required.

Bio-Diversity officer: Significant effect on European sites excluded.

Housing Estates Unit: No objection subject to conditions following submission of further information.

3.4. **Prescribed Bodies**

Irish Water: No objection following the submission of further information required.

3.5. **Third Party Observations**

Third Party submissions were made to the planning authority by a number of residents in the vicinity of the proposed development. The grounds of the appeals reflect the principal concerns raised.

4.0 **Planning History**

P.A.Reg. ref. 07/1270 In this case the site was previously the location of a childcare facility as permitted in a housing development of which the site forms a part.

5.0 **Policy Context**

5.1. **Listowel Municipal District Local Area Plan 2020-2026**

Ballybunion LAP

The site is located within the development boundary for Ballybunion. It is in an area zoned R2 – Existing Residential.

General Objectives regarding infill and urban form include:

BN-GO-08 Encourage the development of a compact and sustainable town structure by ensuring that new development is contiguous with existing development and makes effective use of backland and infill sites

BN-GO-011 Encourage the development of streetscapes in new residential developments particularly on frontages adjoining public roads.

5.2. Kerry County Development Plan 2015-2021

5.2.1. Development Management – Standards & Guidelines - Infill Sites: Infill development is defined in the Development Plan as development on unoccupied/underutilised land that is generally located between two developed sites. The Development Plan requires infill development to have regard to the main adjoining existing uses, design features, building lines and heights, as well as the existence of any features such as trees, built and natural heritage and open spaces on the site or on adjoining sites. Proposals for infill development are required to demonstrate how they will integrate satisfactorily with the adjoining developments, without any loss of amenity.

5.2.2. Note: the draft Plan 2022-2028 has not yet been adopted at time of preparation or signing of this report.

5.3. National Planning Framework (2018)

5.3.1. This document sets out the overall policy framework for development in a national context. A key focus is the consolidation of population and employment centres in sustainable manners. A number of National Policy Objectives are relevant generally to the nature of the proposed development:

- NPO 4 refers to attractive, well-designed liveable neighbourhoods;
- NPO 11 states that in meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth
- NPO 33 refers to the prioritise the provision of new homes where they can support sustainable development at an appropriate scale.

- NPO 35 refers to increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

5.4. Statutory Guidance:

5.4.1. Childcare facilities – Guidelines for Planning Authorities 2001. Section 3.1 refers to new and existing residential development guides that one such facility shall be provided per 75 dwellings may be appropriate. Appendix 2 provides detailed criteria.

5.4.2. Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (including the associated ‘Urban Design Manual’) (2009). Regarding density for centrally located sites section 6.9 states:

‘Within a given smaller town or village, there can be marked variations in development context which affect the density of development and external space standards needed to take account of those contexts. Because of the variety of contexts and the probability of mixed-use developments, it is difficult to be prescriptive about the level of density recommended. S. 6.10 states: ‘The emphasis in designing and considering new proposals should be on achieving good quality development that reinforces the existing urban form, makes effective use of premium centrally located land and contributes to a sense of place by strengthening for example the street pattern or creating new streets. While acknowledging the need for infill residential development it is also stated that ‘The design approach should be based on a recognition of the need to protect the amenities of directly adjoining neighbours and the general character of the area and its amenities.’

5.4.3. Urban Development and Building Height Guidelines 2018. SSPR 4 states: ‘It is a specific planning policy requirement that in planning the future development of greenfield or edge of city/town locations for housing purposes, planning authorities must secure: 1. the minimum densities for such locations set out in the Guidelines issued by the Minister under Section 28 of the Planning and Development Act 2000 (as amended), titled “Sustainable Residential Development in Urban Areas (2007)” or any amending or replacement Guidelines; 2. a greater mix of building heights and

typologies in planning for the future development of suburban locations; and 3. avoid mono-type building typologies (e.g. two storey or own-door houses only), particularly, but not exclusively so in any one development of 100 units or more.'

5.5. EIA Screening

- 5.5.1. Having regard to the limited nature and scale of the proposed development in serviced lands and the absence of any connectivity to any sensitive location, 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. Tara Moran

- 6.1.1. The appellant lives opposite the site and has appealed the decision grant permission on the following grounds:
- Expectation of the retention of green space: Her house was purchased on the understanding the green space would remain free of houses and that only a creche with green space was permitted.
 - The space is needed for all the children and other residents for the benefit of the community.
 - Opposing houses is a departure from the pattern of development in the vicinity (e.g. the Links and council estates including Marconi among others).

6.2. Applicant Response

- It is explained how the site was always an intended development site and was previously subject of a proposal for an apartment and creche mixed use scheme but only the creche had permission.
- The creche was required when 'there was planning for 75 houses.... Over half the overall proposed estate was de-zoned which reduces the total number of houses that can be built...'

- The large green area in the estate exceeds the 10% requirement.
- The absence of opposing houses in housing estates is disputed as supported by examples – maps attached.

6.3. Planning Authority Response

6.3.1. In a response submitted on 4th November 2021 it is clarified that the subject site did not constitute part of the open space for the development permitted in the case of Reg. Ref. 07/1270. The site is described as a serviced plot of ground within the Ballybunion town boundary and within zoned Residential land in the Listowel Municipal District LAP 2000-2026. The proposal for housing and associated green space is considered acceptable.

7.0 Assessment

7.1. In this case a local resident who lives opposite the site of the proposed development has appealed the decision by the planning authority to grant permission. The issues relate to

- Principle of housing on the site
- Impact on residential amenity by reason of overlooking and loss of amenity.

7.2. Principle of Development.

7.2.1. The appellant would like to see the site retained as open space as her house was purchased in this context. The case is made that the site is committed to serving the community in that it is a green space surrounded by housing and that it was subject of a grant of permission only for a creche with open space and is not supposed to be for housing.

7.2.2. The matter of childcare facilities has been considered by the planning authority having regard to the planning history and also the need for such services. In considering this matter the issue has been raised by the planning authority with the applicant and it is explained by the applicant that the site has always been a development site and that more than adequate open space has already been

provided for housing in the area. It is further explained that the demand for childcare facilities has diminished having regard to the reduced amount of houses pursuant to 'de-zoning' housing land in the area. While no overall figures are provided, I note the R4 -Strategic reserve objective for lands to the north in the Listowel Municipal District Local Area Plan (2020-2028). It is stated that less than 75 houses have been constructed which I note is the guidance threshold for such a facility (Childcare facilities – Guidelines for Planning Authorities 2001). The planning authority accepts this case having regard to the availability of childcare facilities in the area and further emphasises in its response to the grounds of appeal that the site did not constitute public open space and that it is a serviced plot of land suitable for development.

- 7.2.3. I note the site is surrounded by housing and within lands that are serviced and zoned for residential use in the Listowel Municipal District Local Area Plan (2020-2028). Objective BN-GO-08 of this LAP seeks to encourage the development of a compact and sustainable town structure by ensuring that new development makes effective use of such infill sites and such policies are I note in accordance with the National Planning Framework. Having regard to the planning history and the site characteristics together with availability of childcare facilities in the area I consider the principle of a small-scale infill residential development instead of childcare facilities or public open space on this site to be acceptable.

7.3. Impact on residential amenity

- 7.3.1. The appellant lives in no.2 Fairway Green which directly faces the south western end of the site frontage and is concerned about the site layout with directly opposing residential development . The case is made that the pattern of directly opposing development is inconsistent with the pattern of housing estate development in the area. One concern relates to potential overlooking and the other relates to loss of open space and play areas for children.
- 7.3.2. In the first instance while I accept the area is low density and not town centre, I do not consider opposing houses in principle to be objectionable in an urban development area and where lands are serviced. I also accept the applicant's refute that there are examples of opposing house layout and moreover I would point out that such a pattern is typical urban development and appropriate by reference to the

LAP objective BN-GO 11 seeking to create streetscapes and also to statutory design guidance such as the Urban Design Guide (2009) and Design Manual for Urban Streets (2019).

- 7.3.3. In the revised plans lodged to the planning authority the layout was slightly modified in that the houses are more centred thereby providing areas of open space at each end in addition to the grass margins to the front where trees could be planted. While I consider the space between the façades is generously spaced for frontage in the public realm I note that there is no directly opposing house to no.2. The proposed houses are at an oblique angle. Accordingly, I do not consider the proposed development would result in any undue overlooking of no.2 Fairways Green or of surrounding properties having regard to the separation distances.
- 7.3.4. With respect to the overall layout and design I consider the proposed layout to be of quite a low density and in many respects could be construed to be too low by reference to current statutory guidance. However I note the existing single storey dwellings and the considerable open character and consider the proposal to be an appropriate balance between efficient use of land while being cognisant of the open character and adjacent single storey dwellings.
- 7.3.5. With respect to the provision of open space, I note the extensive open space both adjacent to the site, and throughout the surrounding housing developments in addition to the abundance of space along the nearby beach and I do not consider the loss of the subject space to unreasonably detract from the residential amenities of the area. The incorporation of bookend pockets of open space will soften the impact on the immediate environment.
- 7.3.6. In conclusion, I concur with the planning authority that the proposed development represents an efficient and appropriate use of serviced lands in a manner that is consistent with the character of the area and would therefore accord with the proper planning and sustainable development of the area.

7.4. **Appropriate Assessment**

- 7.4.1. The site of the proposed development is located within the serviceable urban area of Ballybunion where there is extensive residential development. Having regard to the nature, scale, and location of the proposed development, the serviced nature of the development, the nature of the receiving environment, and the separation distance to

the nearest European site, 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 a European site.

8.0 Recommendation

- 8.1. I recommend that permission is granted in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the residential zoning objective for the site and provision for infill development in the Listowel Municipal District Local Area Plan 2020-2026 as supported by the National Planning Framework 2040, the planning history and the pattern of development in the area which includes a mix of single and two storey housing and extensive open space, together with the proposed nature, scale 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 area, would be acceptable in terms of use, and would otherwise constitute an appropriate form of infill development in accordance with the orderly development of the town of Ballybunion. 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 as amended in further details received by the planning authority on 6th August 2021, 23th August 2021 and 9th September 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. Each of the proposed dwellings shall be occupied as a place of permanent residence and shall not be used as holiday home development without the prior grant of planning permission.

Reason: In the interest of providing for local permanent housing need within the town.

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

Reason: In the interest of visual amenity.

4. Screen walls shall be provided along the side boundaries of the site. Such walls shall be two metres in height above ground level where they bound open space and at least 1.8m but no greater than 2m between adjoining houses to the rear. Details of the layout, the materials, and external finishes of the screen walls shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of construction of the dwellings.

Reason: In the interest of residential and visual amenity.

5. Finished floor level shall not be more than 300mm above the existing ground levels measured at the lowest point along the external wall of the dwelling houses. The applicant shall submit cross-sections through the site indicating existing and proposed ground levels service road level and finished floor levels for written agreement prior to commencement of development works on site.

Reason: In the interest of residential and visual amenity.

6. All of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: in the interest of sustainable transportation.

7. The site shall be landscaped, using only indigenous deciduous trees and hedging species and in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any plants which die, are removed or become seriously damaged or diseased, within a period of 4 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

8. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials [and for the ongoing operation of these facilities] [within each house plot] shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

9. 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.

10. 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.

11. All service cables associated with the proposed development shall be run underground within the site.

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

12. 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 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.

13. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks

from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.
Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

14. 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.

Suzanne Kehely
Senior Planning Inspector

23rd June 2022