



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312426-22

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<b>Development</b>	Construction of 13 houses
<b>Location</b>	Donacarney House (Protected Structure MH 021-108 NIAH 14318001), Donacarney Little, Mornington, Co. Meath
<b>Planning Authority</b>	Meath County Council
<b>Planning Authority Reg. Ref.</b>	21631
<b>Applicant(s)</b>	Joe Connolly.
<b>Type of Application</b>	Planning Permission.
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	First Party & Third Party
<b>Appellant(s)</b>	Joe Connolly. Thomas Fedigan.
<b>Observer(s)</b>	Kathryn and Richard Culhane. Arthur Byrne & Sarah Dunne.
<b>Date of Site Inspection</b>	25 <sup>th</sup> February 2023.

**Inspector**

Elaine Sullivan

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## 1.0 Site Location and Description

- 1.1. The subject site is in north county Meath, approximately 6.6km to the south-west of Drogheda and within the settlement of Donacarney. It has a stated area of 0.733ha and is located within the recently completed Donacarney Wood housing development. Donacarney Wood was developed within the grounds of Donacarney House, a protected structure, (MH021-108, NIAH 14318001). The subject site is in infill site to the front of the development and forms the third and final phase of the development.
- 1.2. The site is directly to the south of the main entrance to the Donacarney Wood development and is adjacent to the R150. To the south of the site is the Maydenhayes residential development, with No's 18-20 Maydenhayes Square directly backing onto the site boundary. Donacarney House and its remaining grounds lies to the south-west of the site and a line of mature trees screens the house from the site.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the construction of 13 houses, (4 no. semi-detached, 2 storey 4-bedroom houses; 6 no. detached, 2 storey, 4-bedroom houses; 3 no. detached, 2 storey, 5-bedroom houses).
- 2.2. The houses along the northern boundary of the site would face onto the existing access road and the development would complete the southern side of the road along with the footpath and public realm. The remainder of the houses would be positioned around two cul-de-sacs with an area of public open space, (1206.5m<sup>2</sup>), to be located along the western boundary and around a line of mature trees that area to be retained. To the west of the site, the new access road would also provide a new entrance to Donacarney House and its associated grounds.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Planning permission was granted by the PA subject to 23 planning conditions which were standard in nature.

3.1.2. Condition No. 14 and Condition No. 8 (a) are the subject of a first party appeal and state the following,

- **Condition 14** – *Prior to the commencement of development, the applicant shall submit to and agree in writing with the planning authority details of a properly constituted Owners' Management Company for the future management of open spaces, roads, footpaths, communal areas and public lighting within the site boundaries onwards from their completion in a satisfactory manner. This shall include a layout map of the permitted development showing the areas to be taken in charge and those areas to be maintained by the Owners' Management Company. Membership of this company shall be compulsory for all purchasers of property in the development. Confirmation that this company has been set up shall be submitted to the planning authority prior to the occupation of the first residential unit.*

**Reason:** *To provide for the satisfactory completion and maintenance of the development in the interest of residential amenity.*

- **Condition 8 (a)** – *Prior to the occupation of any residential unit hereby permitted, the applicant shall provide the public open space and landscaping as indicated on the drawings and specification date received 22/10/21. The open spaces shall be developed for, and devoted to, public use and shall be maintained as public open space by the developer until taken in charge by the local authority or management company.*

**Reason:** *To ensure that the public open space and planting provision is provided in a timely manner and retained for the benefit of the occupiers and to aid integration of the development into the local landscape as soon as possible.*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The decision of the PA was informed by two reports which were prepared during the assessment of the proposed development.

The report of the Planning Officer, (PO), dated the 31<sup>st</sup> May 2021 requested further information, (FI), with regard to 5 points and the report of the 6<sup>th</sup> December 2021 assessed the response submitted by the applicant.

The report of the PO dated the 31<sup>st</sup> May 2021 includes the following:

- The proposal is generally in accordance with the 'A1- Existing Residential' zoning objective for the site.
- The subject site is located within the boundary of the East Meath Local Area Plan 2014-2020. Objective HER OBJ 9 (TII) seeks to protect the trees in the woodlands and attendant grounds of Donacarney House. The proposed development appears to require the removal of at least four mature trees.
- Removal of the trees may be reasonable but other trees require protection from works.
- The proposal could impact on the setting of Donacarney House, which is a Protected Structure.
- Table 2.4 of the Development Plan advocates an average net density of 20dph in Donacarney-Mornington. The proposal would yield a density of 17.72dph which is just below the 20dph and significantly below the maximum density of 35uph as outlined in the Sustainable Residential Guidelines. The constraints of the site are noted in terms of the protected structure and spot objective HER OBJ 9 and in this context the density is acceptable.
- Concerns were raised regarding the proximity of No. 69 to the existing housing at Maydenhayes Square and it is requested that the applicant consider its removal from the scheme.
- Public open space for the entire development should be shown and clarified.
- Details regarding the design of internal roads are required.

- Public lighting details should be reviewed within the context of the landscape plan.
- It was recommended that further information be requested with regard to the issues raised.

The report of the PO dated the 6<sup>th</sup> December 2021 assessed the response to FI included the following:

- Revised layout, design and amendments are, on balance, acceptable regarding the land-use zoning and the wider national objective to deliver housing.
- The revised proposal for Unit 69 is acceptable and would not result in overshadowing, overlooking or overbearing impact. DM OBJ 18 does not apply in this instance as the relative windows are not 'rear windows' and are not 'directly opposing'.
- Other relevant internal departments, (Water, Transport, Public Lighting and Housing), are generally satisfied with the contents of the submission.

### 3.2.2. Other Technical Reports

- Water Services – In the report dated the 5<sup>th</sup> May 2021, there was no objection to the proposed development subject to planning conditions. The report dated the 11<sup>th</sup> November 2021 noted that the development broadly meets the requirements of the Water Services Section with respect to the orderly collection, treatment and disposal of surface water.
- Public Lighting – In the report dated the 6<sup>th</sup> May 2021 a revised lighting plan was requested.
- Roads and Traffic – The report dated the 21<sup>st</sup> May 2021 recommended that further information be requested with regard to turning circles, sightlines, paving and swept path analysis. The second report dated the 18<sup>th</sup> November 2021 noted the amendments made through further information and had no objection.

### 3.3. Prescribed Bodies

- Irish Water – The applicant is requested to engage with Irish Water regarding a Pre-Connection Enquiry, (PCE). The second report dated the 11<sup>th</sup> November 2021 recommended planning conditions to be attached should permission be granted.
- Development Applications Unit, (DAU) – Department of Tourism Culture, Arts, Gaeltacht, Sport and Media – The development is located within an area of high archaeological potential, and it is recommended that archaeological testing be carried out prior to commencement.

### 3.4. Third Party Observations

Four submissions were received by the PA during the statutory public consultation stage. The submissions raised the following issues,

- House No. 69 is incongruous and would impact on the privacy and amenity of houses on Maydenhayes Square.
- New houses would overshadow existing houses in earlier developments.
- Loss of mature trees.
- Excessive density.
- No requirement for more housing.
- Insufficient water infrastructure.
- Insufficient road network.
- Adverse effects on the protected structure.
- Additional traffic on narrow internal roads.
- Insufficient green space for existing residents.
- Disturbance during the construction phase.
- Lack of parking in existing development.
- Houses facing onto 'The Avenue' will exacerbate the parking issues.

- Impact on property prices.

An additional 6 submissions were received by the PA following the submission of further information. The issues raised were substantially the same as those outlined during the initial consultation stage. Specific comments were made regarding the changes proposed for House No. 69 and included the following,

- The separation distance of 18m was inadequate and did not meet the Development Plan requirement of 22m.
- The position of the unit would result in overlooking of gardens.
- It would overshadow existing housing and impact on residential amenity and represent an excessive density.

#### 4.0 Planning History

There is an extensive planning history for the site. Some of the original and more recent permissions are listed below.

**ABP 314456-22, (PA Ref. 22572)** – Live appeal for the subdivision of the existing single storey commercial building into 3 units at Maydenhayes Road, Donacarney Little, Mornington, Co. Meath

**PA Ref. LB/161217** – Planning permission granted on the 28<sup>th</sup> February 2017 for the refurbishment and extension of the existing gate lodge, within the curtilage of Mornington House, (RPS Ref. MH021-108).

**PA Ref. LB/160870** - Planning permission granted on the 10<sup>th</sup> March 2017 to amend a previously permitted residential development, (PA Ref. LB/150417), comprising amendments to elevations and internal arrangement of houses.

**PA Ref. LB/150417** – Planning permission granted by the PA on the 15<sup>th</sup> December 2015 for the demolition of the existing gate lodge, construction of a new entrance and road and the construction of 21 houses.

**PL 17. 243541, (PA Ref. SA140305)** – Appeal granted on the 14<sup>th</sup> November 2014 to amend (PL17.220138) and extend (SA130120) previously granted, revise house

type, together with provision of a curtilage car parking and associated site works at Donacarney Little, Mornington, Co. Meath.

**PL17.243610, (PA Ref. 14/0355)** – Appeal granted on the 14<sup>th</sup> November 2014 for the construction of 225 two storey houses, diversion and culverting of existing watercourse, provision of storm water attenuation, provision of public play areas and all associated site works at Donacarney Little, Mornington, Co. Meath.

**SA130120** - An extension of duration permission was granted in respect of SA/60384/PL17.220138.

**PL. 17.220138, (PA Ref. SA60384)** – Appeal granted on the 5<sup>th</sup> March 2008 for 713 dwellings, crèche, community centre, retail/commercial neighbourhood centre, 1,102 car parking spaces and all associated site development works.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The site is located within the administrative boundary of Meath County Council. The operative Development Plan for the area is the Meath County Development Plan, (CDP), 2021-2027, which came into effect on the 3<sup>rd</sup> November 2021.
- 5.1.2. The application was assessed by Meath County Council in accordance with the policies and objectives of the Meath County Development Plan 2013-2019, which was the operative Development Plan at the time.
- 5.1.3. On review of the contents of both plans I note that there are no material changes between the 2013 County Development Plan and the 2021 County Development Plan as they relate to the appeal site and the current proposal. In this regard I consider the proposal in accordance with the guidance and provisions of the operative Development Plan, namely the 2021 – 2027 Meath County Development Plan, (MCDP).
- 5.1.4. The following sections of the MCDP 2021-2027 are of relevance to the appeal,
  - The subject site is located within the settlement of Donacarney/Mornington and is zoned objective 'A1 – Existing Residential', (Sheet No. 5.1(a) Land Use Zoning).

- The conurbation of Bettystown / Laytown / Mornington East / Donacarney / Mornington is designated as a Self-Sustaining Town in the Settlement Hierarchy for the County.
- In the Self-Sustaining Towns a density of 35 units/ha on all lands will normally be required. In smaller towns a density of up to 25 units/ha is considered appropriate, whilst in villages any development should take cognisance of the pattern of development.

## **Chapter 11 – Development Management Standards**

### **Section 5 – Residential Development Standards**

**11.5.3 – Density** - In general, the number of units to be provided on a site should be determined with reference to the Guidelines for Planning Authorities on ‘Sustainable Residential Development in Urban Areas’ (2009) or any update thereof.

**DM OBJ 14** - The following densities shall be encouraged when considering planning applications for residential development:

- Self-Sustaining Towns: 25uph - 35uph
- Smaller Towns and Villages: 25uph - 35 uph
- Outer locations: 15uph – 25uph

**DM OBJ 18** - A minimum distance of 22 metres separation between directly opposing rear windows at first floor level in the case of detached, semi-detached or terraced units shall be maintained.

**DM OBJ 27** – Public open space shall be provided for residential development at a minimum rate of 15% of the total site area.

#### **5.2. Natural Heritage Designations**

5.2.1. No designations apply.

#### **5.3. EIA Screening**

5.3.1. The proposed development is for an infill development of 13 houses within an existing housing development and does not fall within a class of development set out

in Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations. Having regard to the limited nature and scale of the proposed development 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. Grounds of Appeal

Two appeals have been lodged for the development.

A First Party appeal was lodged by the applicant regarding Condition No. 14 of the planning permission. Condition No. 14 states the following,

*Prior to commencement of development, the applicant shall submit to and agree in writing with the planning authority details of a properly constituted Owners' Management Company for the future management and maintenance of public open spaces roads footpaths communal areas and public lighting within the site boundaries onwards from their completion in a satisfactory manner. This shall include a layout map of the permitted development showing the areas to be taken in charge and those areas to be maintained by the Owners' Management Company. Membership of this company shall be compulsory for all purchasers of property in the development. Confirmation that this company has been set up shall be submitted to the planning authority prior to the occupation of the first residential unit.*

**Reason:** *To provide for the satisfactory completion and maintenance of the development in the interest of residential amenity.*

The grounds of the First Party appeal include the following,

- The applicant notes that the subject development is Phase 3 of the development of the lands at Donacarney House. Phase 1 and Phase 2 were permitted under PA Ref. No's, LV/150417, LB/160870, LB/160871 and LB/180242.

- A significant number of the houses permitted under these permissions have been completed and sold.
- In the case of all permissions for the development of Phase 1 and Phase 2, conditions were attached for the public areas within the development to be taken in charge by the Council. These conditions are relevant given the phased delivery of the development.
- All the communal areas and infrastructural works within the areas covered by the previous permissions, which will also serve the subject development, will be taken in charge.
- Condition No. 14 conflicts with Condition No. 13 and No. 22. Condition No. 13 refers to the development being carried out to 'taking in charge' standards', and Condition No.22 requires a cash bond to ensure the satisfactory completion and maintenance of public areas until taken in charge by the Council.
- Condition No. 14 would put the residents of the proposed houses in an unfair position as they would have to form a management company to maintain the roads and areas of open space within their development, as defined by the application boundary, while all other areas, including the access road to their development, would be maintained by the Council.
- This condition fails to meet the criterion of 'reasonableness' which is defined as being among the 'Basic criteria for conditions', as set out in the Development Management Guidelines for Planning Authorities June 2007, (D.O.E.H.andL.G.).
- Condition No. 8(a) of the permission also makes reference to a 'management company' and states that, *'The open spaces shall be developed for, and devoted to, public use and shall be maintained as public open space by their developer until taken in charge by the local authority or management company'*. The applicant requests that the reference to a 'management company' be removed from this condition.

The grounds of the Third Party appeal include the following,

- The appeal focuses on unit 69 of the development and the impact it will have on the appellants property at No. 20 Maydenhayes Square.
- Unit 69 will be 18m from No. 20 and as such will not meet the minimum separation distance of 22m between opposing properties as set out in Section 11.5.7 of the Meath County Development Plan, (MCDP) 2013-2019.
- The obscured glazing on the upper windows of Unit 69 will not prevent overlooking as the windows can be opened.
- The proposed unit will overshadow the existing property at Maydenhayes Square.
- Changes made to the proposed house under further information do not address the issues raised.
- The proposed Unit 69 does not fit in with the overall scheme and takes up an area that could be used as open space in a development with insufficient open space.
- The appellant also references the original submissions made to the PA which object to the development on the grounds of unacceptable high density, adverse impact on protected structure, over-bearing impact, loss of views, traffic and lack of infrastructure.

## 6.2. Applicant Response

A response from the applicant was received on the 8<sup>th</sup> February 2022 and includes the following,

- In response to concerns raised by the PA's, Unit 69 was amended under further information.
- The original 5-bedroom, Type-C house was replaced with a smaller, narrower Type B2, 4-bedroom unit.

- The orientation of the house was changed and the south-western gable rather than the rear elevation faces the appellants house.
- There are two windows proposed at first floor level in the gable. One window serves an ensuite and the other serves a landing. Both windows will be fitted with obscured glazing.
- The redesigned house was also repositioned within the site and there is now a clearance of 4.2m between the house and the common boundary. The minimum separation distance from the gable to the rear elevation of the appellants house is 20m.
- Section 11.5.7 of the Meath County Development Plan 2021-2027 deals with separation distances between dwellings. DM OBJ 18 states that, '*A minimum distance of 22 metres separation between directly opposing rear windows at first floor level in the case of detached, semi-detached or terraced units shall be maintained*'.
- In this case the proposed windows are on the side elevation of the new house which has a different alignment to the rear elevation of the appellant's house. The windows serve a landing and bathroom and are to be glazed with obscured glass. Therefore, the development plan standard as referred to by the appellant is not applicable.
- The subject windows are positioned almost in the center of the elevation and have a clearance of c. 20.5 - 21m from the elevation of 20 Maydenhayes Square. The windows will be obscured to protect the privacy of new and existing residents.
- If the board are of the opinion that overlooking may occur the applicant is amenable to a condition restricting the level of opening for the upper windows.
- On the subject of overbearing, Unit 69 has a clearance of c. 4.2 – 6.5m from the common boundary, which is an accepted norm in modern developments and, as previously permitted in Phase 1 and Phase 2.
- Regarding overshadowing the northerly location of the proposed house and its distance from the rear boundary will have no material impact on the access of sunlight or daylight to No. 20 Maydenhayes Square.

- The proposed unit, No. 69 will have no material impact on Donacarney House as it is c. 75m to the southeast of the house and is separated by a number of trees.
- Regarding public open space the applicant has demonstrated that the level of provision exceeds 15% of the total site area, which is the standard requirement of the Development Plan.
- The site to be occupied by No. 69 is located to the rear of three residential properties on Maydenayes. it would not be good practice or good design to provide public open space to the rear of these houses.

### 6.3. Planning Authority Response

A response was received from the PA on the 9<sup>th</sup> February 2022 and notes the following,

- At the time of the decision, the PA had concerns that the maintenance of the mature trees along the R150, which are to be retained, would result in excessive cost to the PA.
- The PA had due regard to Section 5.3 of the Annex to Circular Letter PD 1/08 (Taking in Charge of Residential Developments / Management Arrangements), which sets out some instances where it may be appropriate to condition management arrangements, including facilities such as highly landscaped open spaces.
- The PA has been in discussion with the Head of Enforcement and Building Control with responsibility for taking in charge of completed housing estates. It was confirmed that the mature belt of trees and all open spaces will be taken in charge.
- In these circumstances, the PA agrees to the deletion of 'or management company' from Condition No. 8(a) and Condition No. 14 in its entirety.

With regard to the 3<sup>rd</sup> party appeal the PA notes the following,

- The PA has reviewed the issues raised by the third party as outlined in their appeal and is satisfied that these issues have been substantively addressed in the planning reports dated 31st May and 6th December 2021.
- The PA is satisfied that the proposed unit No. 69 is acceptable from a siting, layout and design perspective subject to obscure glazing on the upper floor windows off the southern gable.
- County Development Plan objective DM OBJ 18 does not apply in this instance as the relevant windows are not 'rear windows' or indeed 'directly opposing'.
- At 26.70m there is sufficient separation from the dwellings on the opposite side of The Avenue.
- The proposed development accords with the national regional and local planning policy for multi-unit residential development and the planning authority is satisfied that subject to compliance with the conditions that's the proposed development would be acceptable.

#### 6.4. **Observations**

Two Observations were lodged and are outlined below.

The observation from Arthur Byrne and Sarah Dunne includes the following,

- There appears to be an unauthorised entrance from Donacarney Wood to Donacarney House as well as a service road to the rear of Maydenhayes Square. There are concerns about the future development of Donacarney House.
- The provision of open space within the built development is insufficient, unsafe and unusable.
- The open space is spread out on awkward and dangerous patches of land across the development.
- The entrance to the estate is too narrow to cater for the volume of traffic using it and is dangerous. There is no allowance for visitor parking along the access roads and this causes an obstruction.

- There is an objection to Units 74, 75 and 76 which would face on to The Avenue and exacerbate traffic and parking conditions.
- Additional from the development would cause a hazard.
- The proposed and existing houses will not have sufficient separation distances of 22m between properties.
- The proposed houses facing onto The Avenue will result in overlooking and overshadowing of the existing properties on the opposite side of The Avenue.

The observation from Kathryn Culhane includes the following,

- The entrance to the estate is too narrow and is a danger for pedestrians and traffic. The entrance to the refurbished 'Lodge' has added to the hazard.
- Parking is an issue. Each house has two parking spaces at the front and any additional vehicles are parked on narrow roads or footpaths.
- Although the public open space is 15% of the total site area, it is not fit for purpose.
- Questions are raised about a new entrance that has appeared at the rear of Donacarney Wood.

## 6.5. Further Responses

A further response from the applicant was received on the 2<sup>nd</sup> March 2022 and includes the following,

- It is noted that the PA intend to take in charge all of the open spaces and the cluster of mature trees to the front of the development and that they have agreed to the *'deletion of 'management company' from Condition 8(a) and Condition 14 in its entirety'*.
- The applicant welcomes the comments from the PA on the 3<sup>rd</sup> Party appeal and that they are satisfied that the proposed unit 69 is acceptable from a siting, layout and a design perspective, subject to obscure glazing on the upper windows.

- The applicant is concerned about the time lag between the completion of Phase 2 and the commencement of Phase 3 and requests that the appeal be dealt with in an expedient manner.

A further response was received from the appellant on the 2<sup>nd</sup> March 2022 and includes the following,

- The Council's response does not cover the concerns raised regarding overlooking, overshadowing and loss of privacy.
- Glazed windows are not sufficient to prevent overlooking.
- The windows on the proposed unit will be facing other properties on Maydenhayes Square.
- The separation distance of 26.7m between other properties is not of relevance.
- The existing development has insufficient open space.

## 7.0 **Assessment**

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

- Principle of Development
- Impact on Existing Development
- Condition No. 14
- Appropriate Assessment

### 7.2. **Principle of Development**

7.2.1. The subject site is located within a designated settlement and is zoned for development under objective A1 – Existing Residential. It is an infill site in a recently completed development and forms the last phase of the development. Therefore, I

am satisfied that the principle of the development is acceptable. The development proposed would comprise 13 houses. The original proposal was for 10 no. 4-bedroom houses and 3 no. 5-bedroom houses. This was amended under further information and one of the 5-bedroom houses was changed to a 4-bedroom house. All houses are in accordance with Development Plan standards. They are generous in size and have sufficient private open space to the rear. Each unit has off street parking for two cars to the front.

- 7.2.2. Third party observations raised concerns regarding the density of the site and that the proposal represented overdevelopment and excessive density. The density of the infill development is c. 17 units/ha based on 13 houses on a site of 0.733 ha. This is lower than the recommended density of 20-35 units/ha as set out in Section 6.11 of the Sustainable Residential Density in Urban Areas (2009) and also lower than the Development Plan recommendation of 25-35 units/ha for Self-Sustaining Towns. Whilst the density is lower than recommended, the context of the overall development is relevant. The proposal forms the final phase of a wider development which is located within the grounds of a protected structure. It would match the design of the completed houses in form and finishes and would complete the urban design of the main access road. Within this context, I consider the lower density to be acceptable.
- 7.2.3. Concerns were also raised about excessive traffic and the safety of the access road. The internal access road and entrance have been completed and do not form part of the subject application. The development proposal will connect with the southern side of the access road and complete the public footpath and public realm along this side of the road. As measured from the drawings, the internal roads of the subject proposal would be 5.5m and 6m in width. The main access road, which is known as The Avenue, has a width of 5m, as per the drawings submitted. All carriageway widths are in accordance with the guidance contained in the Design Manual for Urban Roads and Streets, (DMURS, 2019). The PA requested further information regarding turning bays, sightlines from houses, swept paths for trucks and the arrangement of parking spaces. No concerns were raised regarding the safety or width of the internal roads.
- 7.2.4. The issue of public open space for the overall development was also raised by third parties. In response to a request from the PA, the applicant submitted a Proposed

Site Plan, (Layout ID 1708-Ph3-PL-02 AI), which details the open space for the wider development as well as the subject site. The Development Plan requires a minimum of 15% public open space for housing developments. This can be delivered by the proposed development and has been delivered for the wider site. Having visited the site and the completed development, I would agree that, whilst the quantum of open space is in accordance with the standards, its location and arrangement is not optimal. However, the constraints of the site are noted in terms of the protected structure, the location of historic walls and mature trees, all of which add to the character of the development and form the backdrop for the areas of open space.

- 7.2.5. I am satisfied that the proposed development is generally in accordance with the MCDP standards and that it would provide a sufficient level of residential amenity for future residents.
- 7.2.6. Issues were also raised by third parties regarding unauthorised development that may have occurred on the site. Compliance with planning permission falls within the remit of the Planning Authority under Section 8 of the Planning and Development Act 2000, (as amended). It is not a function of the Board and will not be addressed as part of this appeal.

### **7.3. Impact on Existing Development**

- 7.3.1. The grounds of appeal raise specific concerns regarding the impact of the proposed Unit 69 on the amenity of No. 20 Maydenhayes Square, which is in the neighbouring development and backs onto the site. The appellant contends that the existing property will be overlooked and overshadowed by the proposed house. This issue was raised as a concern by the PA in their request for further information and the applicant was requested to omit Unit 69 or amend the development. In response, the applicant changed the house type from Type C – a 5-bedroom unit of 196m<sup>2</sup> to Type B2 – a smaller 4-bedroom unit of 151m<sup>2</sup>. The revised house would be positioned in an east / west orientation, with the gable end of the house at an angle to the rear of No. 20 Maydenhayes Square. There would be a minimum separation distance of 4.2m between the proposed house and the boundary wall and 18.7m the gable and the rear wall of the existing house. The first-floor windows on Unit 69 would serve the bathroom and the landing and would be fitted with obscured glazing.

7.3.2. Regarding compliance with DM OBJ 18, I agree with the PA that this objective is not applicable in this instance as the first-floor windows do not directly oppose each other. Furthermore, the proposed windows would not serve habitable rooms and would be fitted with obscured glazing. I am satisfied that the proposed house would not result in any overlooking of adjoining properties and that the amenity of the existing properties in Maydenhayes Square would not be negatively impacted in terms of loss of privacy. I am also satisfied that the existing house would not be overshadowed by the proposed house by virtue of its location to the north of the existing development and by the separation distance proposed.

7.3.3. Third parties raised concerns regarding the impact of the houses proposed along the southern side of The Avenue access road. There is a concern that the proposed houses would impact on the existing houses along the northern side of The Avenue by overlooking and loss of privacy. There would be a separation distance of 26.7m between the front walls of the existing and proposed houses. Each house would also be separated by off-street parking to the front, pedestrian footpaths and planting. I am satisfied that there would be sufficient distance between existing and proposed houses to prevent any loss of privacy to existing housing.

#### 7.4. **Condition No. 14**

7.4.1. A first party condition was lodged by the applicant against Condition No. 14 and Condition No. 8(a). Condition No. 14 states the following,

*Prior to commencement of development, the applicant shall submit to and agree in writing with the planning authority details of a properly constituted Owners' Management Company for the future management and maintenance of public open spaces roads footpaths communal areas and public lighting within the site boundaries onwards from their completion in a satisfactory manner. This shall include a layout map of the permitted development showing the areas to be taken in charge and those areas to be maintained by the Owners' Management Company. Membership of this company shall be compulsory for all purchasers of property in the development. Confirmation that this company has been set up shall be submitted to the planning authority prior to the occupation of the first residential unit.*

**Reason:** *To provide for the satisfactory completion and maintenance of the development in the interest of residential amenity.*

- 7.4.2. The applicant contends that this condition is unreasonable as it would lead to an unequitable position for new residents. These residents would be responsible for the management of the public open space in their part of the development, whilst all other public spaces in the development would be taken in charge by the PA. The applicant has also confirmed that it was always the intention that the public areas and open space be taken in charge and did not propose that it be managed privately. A submission was received by the PA on the 9<sup>th</sup> February 2022 and states that, at the time of the decision, the PA had concerns that the maintenance of the mature trees along the R150, which are to be retained, would result in excessive cost to the PA. The condition was attached with regard to Section 5.3 of the Annex to Circular Letter PD 1/08 (Taking in Charge of Residential Developments / Management Arrangements), which sets out some instances where it may be appropriate to condition management arrangements, including facilities such as highly landscaped open spaces. Since the decision was made the PA has been in discussion with the Head of Enforcement and Building Control with responsibility for taking in charge of completed housing estates and it was confirmed that the mature belt of trees and all open spaces will be taken in charge.
- 7.4.3. I would agree with the applicant that the application of Condition No. 14 would be unreasonable and would lead to an unequitable situation for existing and proposed residents. I also note the submission of the PA who are happy to remove the condition and recommend that Condition No. 14 be removed in its entirety and that, should permission be granted, and Condition No. 8 (a) be attached, that the reference to 'management company' be removed.

## 7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would 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 planning permission be granted.

## 9.0 Reasons and Considerations

9.1. Having regard to the nature and scale of the proposed infill residential development, within a designated settlement and on a site with zoning objective A1 - Existing Residential, it is considered that, the proposal would be in accordance with the Meath County Development Plan 2021-2027, and subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 7<sup>th</sup> day of April 2021, as amended by the further plans and particulars submitted on the 22<sup>nd</sup> day of October 2021 and on the 10<sup>th</sup> day of November 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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The first-floor windows on the gable wall of Unit No. 69 shall be permanently fitted with obscured glazing.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>

3.	<p>The developer shall engage with Irish Water prior to the commencement of development and shall comply with their requirements regarding the proposed development.</p> <p><b>Reason:</b> To ensure a proper standard of development.</p>
4.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services and shall be agreed in writing prior to the commencement of development.</p> <p><b>Reason:</b> In the interest of public health.</p>
5.	<p>The landscaping scheme, as submitted to the planning authority on the 7<sup>th</sup> day of April 2021 and as amended by further information submitted on the 22<sup>nd</sup> day of October 2021, shall be carried out within the first planting season following substantial completion of external construction works.</p> <p>Hedges and trees shall not be removed during the nesting season, (i.e. March 1<sup>st</sup> to August 31<sup>st</sup>).</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed, or become seriously damaged or diseased, within a period of five years from the completion of the development, or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interest of residential and visual amenity.</p>
6.	<p>The developer shall appoint and retain the services of a qualified Landscape Architect (or qualified Landscape Designer) as a Landscape Consultant, throughout the life of the construction works and shall notify the planning authority of that appointment in writing prior to commencement of development. A practical completion certificate shall be signed off by the Landscape Architect when all landscape works are fully completed to the</p>

	<p>satisfaction of the planning authority and in accordance with the permitted landscape proposals.</p> <p><b>Reason:</b> To ensure full and verifiable implementation of the approved landscape design.</p>
7.	<p>The areas shown as public open space on the lodged plans shall be reserved for such use. The public open space shall be completed and fully landscaped before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer.</p> <p><b>Reason:</b> In the interest of the amenities of the occupants of the proposed housing</p>
8.	<p>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.</p> <p><b>Reason:</b> In the interest of visual amenity</p>
9.	<p>Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to the planning authority for agreement prior to the commencement of development.</p> <p><b>Reason:</b> In the interest of amenity and public safety.</p>
10.	<p>The site access arrangements and the internal road network serving the proposed development, including turning bays, junctions, sightlines, parking areas, footpaths and kerbs, shall be in accordance with the detailed requirements of the planning authority for such works. All residential parking spaces shall be constructed so as to be capable of accommodating future electric vehicle charging points with a minimum 10% of spaces to be fitted with functional electric vehicle charging points.</p> <p><b>Reason:</b> In the interests of amenity and of pedestrian and traffic safety.</p>
11.	<p>(a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at</p>

	<p>minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.</p> <p>(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.</p> <p><b>Reason:</b> To protect trees and planting during the construction period in the interest of visual amenity.</p>
12.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and</p> <p>(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:</p> <ul style="list-style-type: none"> <li>(i) the nature and location of archaeological material on the site, and</li> <li>(ii) the impact of the proposed development on such archaeological material. A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the</li> </ul>

	<p>planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
13.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables crossing or bounding the site shall be relocated underground as part of the site development works, at the developer's expense.</p> <p><b>Reason:</b> In the interests of visual and residential amenity.</p>
14.	<p>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.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
15.	<p>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 of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form 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.</p> <p><b>Reason:</b> To ensure the satisfactory completion of the development.</p>
16.	<p>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 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.</p> <p><b>Reason:</b> 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 for the area.</p>
17.	<p>Prior to the commencement of any house in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all</p>

	<p>houses and permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p><b>Reason:</b> To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
18.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
19.	<p>Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p><b>Reason:</b> In the interest of sustainable waste management.</p>
20.	<p>The site development and construction works shall be carried out such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining</p>

	<p>public roads by the developer and at the developer's expense on a daily basis.</p> <p><b>Reason:</b> To protect the residential amenities of property in the vicinity.</p>
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Elaine Sullivan  
Planning Inspector

14<sup>th</sup> March 2023