



An
Bord
Pleanála

Inspector's Report ABP-312461-22

Development	Six two-bed terraced houses with associated private open space, pedestrian footpath, connection to public services, car parking spaces, and all associated site development works.
Location	Barnes court, Ballybofey, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	21/50819
Applicant(s)	Andrei Bogdan
Type of Application	Permission
Planning Authority Decision	Grant, subject to 16 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	P Mulrine & Sons
Observer(s)	None
Date of Site Inspection	14 th April 2022
Inspector	Hugh D. Morrison

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
4.0 Planning History.....	5
5.0 Policy and Context.....	5
5.1. National Planning Policies and Advice	5
5.2. Development Plan.....	5
5.3. Natural Heritage Designations	6
5.4. EIA Screening	6
6.0 The Appeal	6
6.1. Grounds of Appeal	6
6.2. Applicant Response	7
6.3. Planning Authority Response	8
6.4. Observations	9
6.5. Further Responses.....	9
7.0 Assessment	9
8.0 Recommendation.....	16
9.0 Reasons and Considerations.....	17

1.0 Site Location and Description

- 1.1. The site is located c. 0.24 km to the south-west of the zoned town centre of Ballybofey. This site lies on the eastern side of the L-31544-0, which serves a residential cul-de-sac on its western side known as Barnes Court. This local road also serves three bungalows to the north of the site and an unsealed lane, which provides access to a row of residential properties along Donegal Road (N15) to the south of the site. The site is capable of being accessed off this unsealed lane, too. The local road forms a “T” junction with the N15. This junction incorporates a right-hand turning lane for road users turning right onto the local road. A new footpath has recently been constructed between this junction and the site along the eastern side of the local road.
- 1.2. The area surrounding the site is composed not only of residential properties, but a major factory lies to the east, and a bed n’ breakfast, vehicular tyre and battery shop, and service station lie on the southern side of the aforementioned junction. The factory produces fruit juices, and it is operated by P Mulrine & Sons, the appellant.
- 1.3. The site itself is regular in shape. This site falls slightly towards its northernmost corner, and it extends over an area of c. 1476 sqm. The site is presently vacant, open to the roadside, and overgrown. Its eastern boundary is undefined “on the ground” and there is a strip of land between this boundary and the adjacent fenced boundary with the site of the factory beyond. To the north, the boundary between the site and the site of the nearest bungalow is denoted by means of a dense evergreen hedgerow and, to the south, the unsealed lane abuts the assorted rear boundaries of the row of residential properties.

2.0 Proposed Development

- 2.1. As originally submitted the proposal would have entailed the construction of 6, two-storey, two-bed, terraced dwelling houses (98 sqm x 6 = 588 sqm). These dwelling houses would have been sited in a single row on the western half of the site facing the local road. They would have been accompanied by 12 perpendicular car parking spaces to the front and gardens to the rear. The dwelling houses and the gardens would have been encircled by means of a footpath. A pedestrian crossing of the local

road would have been provided to connect this footpath to the public footpath on the opposite side of this road.

- 2.2. As revised, one dwelling house from the southern end of the terrace would be omitted and the terrace would be re-sited slightly further to the west. Three parallel parking spaces would be provided to the front of the terrace and the unsealed lane to the south would be formally laid out as a cul-de-sac with a turning head and 5 perpendicular parking spaces off its north-eastern end. The footpath serving the rear gardens would be re-routed alongside the cul-de-sac and these spaces. It would connect with a new pedestrian crossing over the cul-de-sac, which in turn would connect with the newly constructed public footpath on the eastern side of the local road.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission was granted, subject to the 16 conditions, the second of which requires that the proposed bank of 5 car parking spaces be re-sited to a position adjoining the eastern boundary of the site, along with consequential amendments to the rear garden of the most southerly of the proposed dwelling houses.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The following further information was requested:

- Submit details of legal interest in the right of way (RoW) to the rear of dwellings to the south of the site.
- Submit revised site layout showing omission of the dwelling denoted as No. 1, 2m wide footpath, 1.5 car parking spaces per dwelling, parking to accord with DMURS, and proposals for the retention of the RoW.

3.2.2. Other Technical Reports

- TII: Following receipt of further information, advice confirmed that insufficient information has been submitted to demonstrate that the proposal would not have a detrimental impact on the capacity, safety or operational efficiency of the national road network in the vicinity of the site.
- Irish Water: No objection: Standard advice.
- Donegal County Council:
 - Building Control: Standard advice.
 - Fire Officer: No objection: Standard advice.
 - Road Design: Requested further information (see above).

4.0 Planning History

None

5.0 Policy and Context

5.1. National Planning Policies and Advice

- National Planning Framework
- Sustainable Residential Development in Urban Areas Guidelines
- Quality Housing for Sustainable Communities: Best Practice Guidelines

5.2. Development Plan

The Donegal County Development Plan 2018 – 2024 (CDP) identifies Ballybofey – Stranorlar as a strategic town within the County. Accordingly, under the Seven Strategic Towns Local Area Plan 2018 – 2024 (LAP), Ballybofey – Stranorlar is one of the towns addressed. Under this Plan, the site is shown as lying within an established development zone, wherein the objective is “To conserve and enhance the quality and character of the area, to protect residential amenity and to allow for development appropriate to the sustainable growth of the settlement.” Under Policy

GEN-H-2, proposals for multiple residential development can be considered within this zone.

5.3. Natural Heritage Designations

River Finn SAC (002301)

5.4. EIA Screening

Under Items 10(b)(i) and (iv) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2022, where more than 500 dwelling units would be constructed or where urban development would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere, the need for a mandatory EIA arises. The proposal is for the development of 5 or 6 dwellings on a site with an area of 0.1476 hectares. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- Attention is drawn to folio no. DL91145F, which shows the south-eastern corner of the site as lying within the ownership of Michael Cannon, who has not given his consent to the application.

The applicant's further information only refers to folio DL25990F, which shows the site within the ownership of Patrick McLaughlin.

The Planning Authority should have addressed the anomaly of part of the RoW lying outside the red edge of the site.

- The site is zoned "established development" rather than "primarily residential", under which it would be subject to a sequential approach to its development.

As it is not expressly zoned for residential use, the provisions of Part V do not apply – an inequitable outcome.

- Attention is drawn to the TII's objection and the absence of a RSA.
- The proposal would contravene Objective UB-P-13 of the CDP, which requires that multi-residential unit proposals be accompanied by 10 – 15% communal open space.
- The proposed pedestrian crossings would be sub-standard and the reliance upon the public footpath on the opposite side of the road would set an undesirable precedent for other small scale residential development.
- Other developments in Ballybofey – Stranorlar have been required to “pre-treat” wastewater, due to the limited capacity of the town’s WWTP.
- The proposal is accompanied by neither stormwater calculations nor details of the capacity of the public stormwater sewer and so the acceptability of discharge to the same has not been demonstrated.
- No SuDS measures have been proposed.
- Attention is drawn to the Board’s decision on ABP-304280-19, wherein the proximity of proposed apartments without adequate acoustic protection from an adjacent established public house was a reason for refusal.

The appellant’s factory is adjacent to the site. Noise emanates from it and when 3 round the clock shifts are being run such noise can be noticeable at anti-social hours. No noise mitigation measures have been proposed by the applicant and so the risk of complaints from future residents would arise in a manner analogous to the above cited appeal case.

6.2. Applicant Response

- The applicant confirms that the site is fully within his ownership.
- Under the zoning of the site, housing is permissible. Furthermore, the application was submitted before the Part V threshold was amended from over 9 to over 4 dwellings.
- The absence of an appeal from the TII is noted.

- Adequate communal open space already exists within the locality of the site. The proposal would replace a brownfield site, which is prone to fly-tipping, with a well-integrated development.
- The proposed pedestrian crossings were not the subject of any objection from the Planning Authority's Road Design consultee.
- Additional wastewater loadings from 5 two-bed dwellings would be minimal.
- Likewise, stormwater run-off would be minimal.
- The presence of the appellant's factory would be evident to any prospective residents of the proposal.

The proposed dwellings would be sited as far from the factory as the site would allow.

6.3. Planning Authority Response

- Attention is drawn to the absence of any objection from Michael Cannon.
- The development of the site, as an infill one, would accord with not only the CDP, but national planning policies.
- Attention is drawn to the N15, which is subject to a 60 kmph speed limit as it passes Barnes Court. This residential area comprises 20 existing dwellings to which the 5 proposed would be added. Given this scale of development, the need for a RSA was not considered to be necessary.
- Attention is drawn to communal open space nearby and to the amendments secured under further information, i.e., the omission of 1 dwelling and the enlargement of rear gardens.
- Since the further information stage, the Roads Authority constructed a public footpath on the eastern side of Barnes Court between its junction with the N15 and the site. The need for a pedestrian crossing to the pre-existing public footpath on the western side has thereby been obviated.
- The town's WWTP is about to be upgraded: Irish Water did not require any pre-treatment.

- The site does not lie within a flood risk area. The County Council's Engineering Section did not raise any capacity concerns over the receiving stormwater sewer.
- While an acoustic barrier was considered, it was set aside as existing dwellings are nearer to the appellant's factory than the proposed ones would be.

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of relevant national planning policies and advice, the Donegal County Development Plan 2018 – 2024 (CDP), the Seven Strategic Towns Local Area Plan 2018 – 2024 (LAP), the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Legalities,
- (ii) Land use, zoning, and density,
- (iii) Development standards,
- (iv) Amenity,
- (v) Traffic, access, and parking,
- (vi) Water, and
- (vii) Appropriate Assessment.

(i) Legalities

7.2. As originally submitted, the site layout plan showed the existing unsealed lane to the rear of the row of residential properties to the south of the site as being sealed and

laid out as a “footpath/access to existing dwellings”. It also showed the southern boundary of the site as running through the south-western end of this unsealed lane and the utilisation of the portion of this end outside the site for the purpose of laying a pipe to connect with the public water mains in the adjoining local road. As revised, the site layout plan shows the unsealed lane as being formally laid out as a cul-de-sac with a turning head and the majority of proposed car parking spaces off it. This plan also shows the omission of the aforementioned water pipe connection.

- 7.3. Under further information, the applicant was requested to submit details of his legal interest in the site. He responded by submitting a copy of Folio DL25990F, which states that the site is in the ownership of his father-in-law, Patrick McLaughlin. An accompanying letter from him, gives consent to the applicant to make the current application. A copy of a further Folio (DL81145F) is submitted, which states that Donegal County Council is the owner of an adjoining strip of land to the south-west of the site. Part of this strip coincides with the unsealed lane, and it would be needed to provide the proposed formally laid out cul-de-sac.
- 7.4. The appellant advises that Michael Cannon is the owner of the aforementioned adjoining strip of land and that his application to register his legal interest in this strip is pending with the Property Registry Authority. (It has submitted a copy of its search against Folio DL81145F, which it undertook on 7th January 2022). The applicant did not obtain the consent of this landowner to incorporate part of this strip into his proposal so that it can be developed to provide the proposed formerly laid out cul-de-sac.
- 7.5. The omission identified by the appellant is significant as with the submission of the revised plans the strip in question is needed if the proposed cul-de-sac is to be provided. Under the revised proposal, the majority of the proposed off-street parking spaces would be accessed off this cul-de-sac and so its provision is critical to the development. In these circumstances, I consider that the landowner’s consent to the application needs to be obtained and the red edge of the site extended to include the portion of the strip of land in question. The Board may wish to request that these matters be attended to under further information.
- 7.6. I conclude that not all the land that is needed to ensure that the development can proceed is under the applicant’s control. I conclude, too, that, until the landowner has

obtained the consent of the landowner who controls the additional land that is needed, the proposal would be premature.

(ii) Land use, zoning, and density

- 7.7. Under the LAP, the site is zoned is shown as lying within an established development zone, wherein the objective is “To conserve and enhance the quality and character of the area, to protect residential amenity and to allow for development appropriate to the sustainable growth of the settlement.” Under Policy GEN-H-2, proposals for multiple residential development can be considered within this zone. However, Table 5.1 makes clear that the LAP’s housing strategy relies upon sites that are zoned either primarily residential, low density residential, or opportunity sites to provide the needed supply of housing land to meet its growth targets. Accordingly, this site is not included within this strategy, and it is not *prima facie* subject to Part V of the Planning and Development Act, 2000 – 2021.
- 7.8. Under the Sustainable Residential Development in Urban Areas Guidelines advice is given on density. Ballybofey has a population of less than 5000 and so, under these Guidelines, it is a small town. The site is an edge of centre one and so a density of between 20 – 35 dwellings per hectare is deemed to be appropriate. As originally submitted, 6 dwellings were proposed. Under further information, these dwellings were subsequently reduced in number by 1 to 5. The site has an area of c. 0.1476 hectares and so, as revised, the proposal would exhibit a density of c. 34 dwellings per hectare. Compliance with the advice of the Guidelines on density would thereby be achieved.
- 7.9. I conclude that the proposal would, in principle, be appropriate from land use and zoning perspectives and that its density would, likewise, be appropriate for an edge of centre site in Ballybofey.

(iii) Development standards

- 7.10. Each of the proposed dwellings would afford essentially the same accommodation. Aesthetically they would be distinguished by a stepdown in level between the southerly two dwellings and the central one and the northerly two dwellings and the central one. Each of the end dwellings would have a stone finished bay window and a fully hipped gabled roof end.

- 7.11. Internally, each dwelling would afford two-bed/three-person accommodation, although at 9.3 sqm the second bedroom would be a generous sized single bedroom, i.e., it would be mid-way between the minimum areas of 7.1 sqm and 11.4 sqm, respectively, for single and double bedrooms cited in the Quality Housing for Sustainable Communities: Best Practice Guidelines. Each dwelling would have a total area of 98 sqm, which would be well in excess of the minimum of 70 sqm for this type and size of dwelling cited in Table 5.1 of the Best Practice Guidelines. Likewise, aggregate living and bedroom and storage areas would be in excess of the minimums cited in this Table.
- 7.12. Each dwelling would be served by between 101 and 167 sqm of private open space in the form of a rear garden. The Planning Authority considered that the useability of the most southerly of the rear gardens would be unduly affected by the encroachment of a row of 5 car parking spaces and, so under Condition No. 2 attached to its permission, these spaces would be re-sited adjacent to the eastern boundary of the site. I concur that this minor rearrangement of the site layout would facilitate the greater useability of this rear garden, while being consistent with the likely access/egress requirements of the existing residential properties to the south.
- 7.13. The appellant expresses concern that the proposal would not be served by any on-site communal open space and so it would contravene Policy UB-P-13 of the CDP. The applicant and the Planning Authority responded by drawing attention to the existence of such open space nearby and to the fact that the rear gardens for the proposed dwelling houses would be larger, under the revised proposal than under the original one.
- 7.14. The Policy cited by the appellant refers to “large infill sites or brown field” sites. The subject site is 0.1476 hectares and so it is a modest one that would not lend itself to the provision of communal open space. Additionally, during my site visit, I observed a small amount of communal open space on Barnes Court close by.
- 7.15. I conclude that quantitatively the proposal would accord with relevant development standards, which are intended to ensure that dwellings would afford a satisfactory standard of amenity to future residents.

(iv) Amenity

- 7.16. The proposed terrace of dwelling houses would be sited in the western half of the site in a position whereby the front and rear elevations would face west south-west and east north-east, respectively. Existing dwelling houses to the east and to the south would be at greater than the conventional clearance distances from these dwelling houses. To the north, the principal elevation of the nearest bungalow faces south south-east and so it would partially correspond with the northernmost of the proposed dwelling houses over distances of 10.8 to 12.5m. A dense evergreen hedgerow along the common boundary would be retained and a fully hipped gable roof end would be specified for the northernmost dwelling house. These measures should ensure that neighbour privacy is safeguarded and any loss of lighting to the bungalow is minimised.
- 7.17. The appellant has drawn attention to noise generated by its factory, which can be more noticeable when night shifts are running, and the ambient noise level of the area is lower. At the application stage, it suggested that an acoustic barrier be considered. The Planning Authority did not take this suggestion forward judging that the proposed dwelling houses would be no nearer the factory than existing ones. At the appeal stage the appellant has expressed concern that the proposal may result in additional noise complaints, thereby intimating that its factory is the subject of existing ones. The applicant has responded by stating that the factory would be visible to prospective residents and so they would be aware of its presence.
- 7.18. I undertook a site visit on Thursday lunchtime 14th April 2022. During this visit, I heard a continuous low volume electrical/mechanical noise emanate from the factory. As a snapshot in time, I am unable to say if this noise was typical or not of the factory. It did strike me as being one that would affect amenity, particularly its continuous quality.
- 7.19. I am concerned that insufficient information is available to assess the noise in question. The applicant has not undertaken any noise survey and it has not proposed any noise mitigation measures. Likewise, the Planning Authority did not consult Environmental Health on the proposal. In the absence of any information or advice on noise from the factory, I consider that the amenities of residents could be unacceptably impaired and, potentially, their public health placed in jeopardy. To

condition a noise survey and mitigation measures would be to assume that this scenario would be capable of being avoided. I am not confident that this would be a reasonable approach to adopt and so I consider that, in the absence of any solution to this problem, a grant of permission would be premature. The Board may wish to request that this issue be addressed under further information.

- 7.20. I conclude that, while the proposal would be compatible with the amenities of the area, the applicant has not demonstrated that it would afford, qualitatively, an acceptable standard of amenity to future residents.

(v) Traffic, access, and parking

- 7.21. The proposal, as revised, is for 5 dwellings. This proposal would generate vehicular traffic, during both its construction and operational phase, which would use the junction between the N15 and the L-31544-0. This junction occurs along a portion of the national primary road that runs through Ballybofey, urban area, and that is subject to speed limit of 60 kmph. It is also laid out with a right-hand turning lane for road users wishing to turn right into the local road. During my site visit, I observed that forward visibility available to approaching road users and sightlines available to road users exiting from this local road are all good.
- 7.22. While I note the TII's objection to the proposal, I consider that traffic generated by the proposal would result in only a small number of additional vehicular turning movements at the junction in question, i.e., the applicant estimates the daily number of trips to be 20. Existing turning movements at this junction are few in number, as only 20 dwellings are accessed off the L-31544-0. I, therefore, consider that the operating efficiency of this junction, which already incorporates the above cited right-hand turning lane, would not be jeopardised by the proposal. I also note from the LAP that a by-pass of the town is proposed for the future, the corollary of which would be a reduction in through traffic at the junction in question.
- 7.23. Access to the site would be by means of an upgrade in the unsealed lane that runs through its southern portion. The local road that affords access to this lane is subject to a speed limit of 30 kmph and it is of straight alignment as it passes the site. A recently constructed public footpath along the eastern side of this road links the footpath on the nearside of Donegal Road (N15) to the site. Forward visibility of and sightlines from the unsealed lane/proposed cul-de-sac would be satisfactory.

- 7.24. In the light of the foregoing considerations, I do not consider that the proposal needs to be the subject of a RSA.
- 7.25. Under the revised proposal, 8 car parking spaces would be provided, 3 of which would be laid out as parallel parking spaces in front of the terrace and 5 of which would be laid out at the end of the cul-de-sac. Under the CDP, 1.5 spaces are required for each terraced dwelling, i.e., 7.5 spaces, or indeed the 8 proposed. Specific bicycle parking is not required, where, as in the current case, footpath access is available to rear gardens. The proposal would, therefore, comply with the relevant parking standards.
- 7.26. I conclude that traffic generated by the proposal would be capable of being accommodated satisfactorily on the public road network, including the junction between the N15 and the L-31544-0, and that access arrangements would, likewise, be satisfactory. Relevant parking standards would be met.

(vi) Water

- 7.27. Under the proposal, the developed site would be served by the public water mains and the public foul and stormwater sewerage system.
- 7.28. Irish Water raised no objection to the proposed connection of the developed site to the public water mains and public foul water sewerage system.
- 7.29. The appellant draws attention to the requirement that other housing developers in the town have faced to pre-treat foul water in advance of the upgrade of Irish Water's Stranorlar Wastewater Treatment Plant. The applicant responded by stating that the additional loading from the proposal would be minimal and the Planning Authority responded by drawing attention to the absence of this requirement from Irish Water's advice and to the imminence of the said upgrade.
- 7.30. The appellant also draws attention to the absence of any calculations to demonstrate that surface water run-off from the developed site would be capable of being accommodated in the public stormwater sewerage system and to the absence of any SuDS measures. The applicant responded by stating that the additional loading from the proposal would be minimal and the Planning Authority responded by drawing attention to the absence of any concerns from its Engineering Section and the absence of any identified flood risk on the site or within its vicinity.

- 7.31. I note that the proposal is for a small housing scheme and that its resulting foul and surface water drainage requirements would be, correspondingly, modest. I note, too, the above exchanges between the parties. However, I consider that the absence of SuDS measures should be attended to. Thus, the opportunity to reduce the discharge from the site to the public stormwater sewer should be realised, e.g., by the specification of permeable surfaces and the installation of water butts. These measures could be conditioned.
- 7.32. I conclude that, subject to the inclusion of SuDS measures within the proposal, no water issues would arise.

(vi) Appropriate Assessment

- 7.33. The site is located within Ballybofey, an urban area. Under the proposal, the developed site would be connected to existing public services. This site lies c. 0.3 km to the south of the River Finn SAC (002301). Apart from via public services, I am not aware of any hydrological or other links between the site and this SAC or any other European sites in the wider area surrounding Ballybofey, and so no Appropriate Assessment issues would arise.
- 7.34. Having regard to the nature, scale, and location of the proposal, and the nature of the receiving environment, it is concluded that no Appropriate Assessment issues arise as the proposal 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

That permission be refused.

9.0 Reasons and Considerations

1. Having regard to Article 22(2)(b)(i) & (g)(i) of the Planning and Development Regulations, 2001 – 2022, the applicant has not encapsulated within the red edge of the application site all the land that would be needed for his development, and he has not obtained the consent of all the affected landowners. The omitted land is critical to the satisfactory provision of a means of vehicular access to the site and attendant car parking provision. Consequently, in the absence of its inclusion within the application site and the affected landowner's consent to such inclusion, any grant of permission to the proposal would be premature and it would risk a scenario in which only a sub-standard means of vehicular access could be provided to the serious detriment of road safety. The proposal would thus be contrary to the proper planning and sustainable development of the area.
2. Having regard to the noise generated by the factory to the east of the site, the applicant has failed to demonstrate by means of a noise survey and any corresponding mitigation measures incorporated within his proposal that the proposed dwelling houses and their rear gardens would be capable of affording a satisfactory standard of amenity to future residents. In these circumstances, any grant of permission to the proposal would be premature, as it would risk a scenario in which, potentially, the public health of residents would be jeopardised. The proposal would thus be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

28th April 2022