



An  
Bord  
Pleanála

## Inspector's Report ABP312852-22

### Development

Permission for development that will consist of 1 no. 4-bedroom part 2 storey/part single storey dwelling & 1 no. 3-bedroom part 2 storey/part single storey dwelling in a rear garden with access from the public road via Hale Court Housing Estate together with all site development works including boundary treat, parking, landscape and connection to services within Hale Court Housing Estate.

### Location

Hale Street, Ardee, Co. Louth.

### Planning Authority

Louth County Council.

### Planning Authority Reg. Ref.

211221.

### Applicant(s)

Ronan and Noleen O' Brien.

### Type of Application

Permission.

### Planning Authority Decision

Grant subject to condition.

### Type of Appeal

Third Party.

<b>Appellant(s)</b>	Hale Court Owners Management Company Ltd.
<b>Observer(s)</b>	N/A.
<b>Date of Site Inspection</b>	21.07.2022.
<b>Inspector</b>	Mary Mac Mahon.

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## 1.0 Site Location and Description

- 1.1. Hale Street is located on the eastern side of Ardee town. It forms part of the R170, which links Ardee to the M1. The area is largely suburban. Historically, the plot sizes for dwellings have been large. The area has been further developed in recent times, with a number of new estates created from sites fronting onto the street. The adjoining site to the west, Hale Court, is one such development.
- 1.2. Hale Court runs parallel to the site. It consists of 8 no. two storey, semi-detached and detached dwellings on a 'T' shaped spine road, with hammer head turning spaces at either end. The houses on the first part of the estate are on one side of the road, with parking and a landscaped area on the other. To the south, the car parking is located in front of the houses. The final wearing surface of the spine road has still to be laid.
- 1.3. On the east side of the site are two houses that back onto the site. The first is single storey. The second is a red bricked, two storey dwelling and garage is located further south, which is accessed from another entrance onto Hale Street.
- 1.4. The site consists of most of the rear garden of a single storey dwelling, within family ownership. The site rises circa 1.3 metres from north to south. The site area is stated as 0.1061 ha.

## 2.0 Proposed Development

- 2.1. The proposed development is for two no. two storey part single storey dwellings, sited opposite each other with a central turning space. The central turning space is accessed via gates from Hale Court. The proposed dwelling House A, to the north is a detached, four bedroom dwelling, 173 square metres in area. There are two car parking spaces and the private open space is 190 square metres to the rear. House B is to the south and is a detached, four bedroom dwelling, 173 square metres in area, with two car parking spaces and 210 square metres of private open space to the rear. A 2 metre high wall is proposed to separate House B from the original house, which retains 320 square metres of private open space. Save for an obscured window at first floor on the western elevations of the dwellings, the first floor windows face north and south.

- 2.2. It should be noted that the wall and landscaped area on the western side of the site is in the blue line on the Site Development Plan, Site Sections and Landscaping Drawing No. RNOB-21-101. The kerb is to be removed and the wall cut back to provide an automatic gate and piers.
- 2.3. Water supply and foul water drainage is to the public system. Surface water is to be disposed to a soakpit.
- 2.4. At Further Information, the soakaway system was revised. A schedule of finishes were supplied. The electronic gates were omitted.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Grant, subject to 15 no. conditions. The conditions are standard.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The report refers to policies in the *Louth County Development Plan, 2021-2027*. The site is zoned '*Residential Existing*', the objective to '*protect and enhance amenity of developed residential communities*'. It notes that 7 submissions were made on the proposed development. The report screened for EIA and Appropriate Assessment and found none were required. The proposed development is considered acceptable in principle. The layout, design and scale respond to the character of the site and its environs positively, but finishes require to be more in keeping with Hale Court. The house size is well above minimum standards. The impacts on neighbouring dwellings by reason of overlooking, overshadowing overbearing or loss of light are not unreasonable. Adequate separation distances are provided. Private open space for the proposed dwellings and the existing dwelling are acceptable.

The report notes that a letter of consent from the developer of Hale Court is included, granting permission to access the site and associated services. The level of traffic generated by the proposed development is not significant. Electronic gates are not acceptable. However, the access route would result in the loss of two parking spaces

on Hale Court and replacement car parking spaces are required. Further information is required and new public notices would be necessary in any response.

The Further Information response in relation to the soakaway was considered acceptable, subject to condition. The schedule of finishes were considered pleasing. The applicant confirmed that no changes to the car parking layout was required. A grant of permission was recommended.

### 3.2.2. Other Technical Reports

The Infrastructure Directorate requested a revised soakaway design to allow for 6 cubic metres for the 24 hour storm duration and a 20% increase for climate change, instead of the 10% allowed for.

Water Services had no objection.

## 4.0 Planning History

There is no recent planning history on the site.

### On the site to the west:

19614 – Permission refused to Simon McKeever to remove the existing boundary hedge to the east side of the residential development granted under PL Re. 18965 and replace with a c.2 metre high rendered and capped block wall.

The was refused due to the unacceptable visual impact of the proposed development.

18965 – permission granted to Simon McKeever on 20/05/2019 for the demolition of an uninhabitable dwelling and the construction of 8 no. three storey (two storey plus attic dwellings, new entrance off Hale Street and all associated works.

Condition 3 of the permission requires a bond for the security of the completion of the estate to taking in charge standards. It is to be repaid either when the estate is taken in charge or the council consider the estate to be brought to a satisfactory condition.

Condition 5 requires a detailed landscaping masterplan to be submitted. The landscaping plan shows a hedgerow as the existing boundary with the adjoining site under appeal.

## 5.0 Policy and Context

### 5.1. Project Ireland 2040: National Planning Framework (2018)

The first National Strategic Outcome expected of the National Planning Framework is compact growth. Effective densities and consolidation of urban areas is required to minimise urban sprawl and is a top priority. 40% of future housing delivery is to be within the existing footprint of built up areas (National Policy Objective 3a).

National Policy Objective 35 -

*Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.*

### 5.2. Sustainable Residential Developments in Urban Areas 2009

5.3. *The provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such development can be provided either by infill or by sub-division:*

*(i) Infill residential development - Potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or walking time-bands. Sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill. The local area plan should set out the planning authority's views with regard to the range of densities acceptable within the area. 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, i.e. views,*

*architectural quality, civic design etc. Local authority intervention may be needed to facilitate this type of infill development, in particular with regard to the provision of access to backlands.*

#### **5.4. Design Manual for Urban Roads and Streets, 2019**

Page 101 states:

*“The standard carriageway width on Local streets should be between 5-5.5m (i.e. with lane widths of 2.5-2.75m).”*

*“The total carriageway width on Local streets where a shared surface is provided should not exceed 4.8m.”*

#### **5.5. Development Plan**

The *Louth County Development Plan 2022-2027* applies. The site is zoned “A1” – *Existing Residential*. The land use objective is to:

*“To protect and enhance the amenity and character of existing residential communities.”*

The Guidance associated with this land use objective is to:

*“The objective for this zoning is to conserve and enhance the quality and character of established residential communities and protect their amenities. Infill developments, extensions, and the refurbishment of existing dwellings will be considered where they are appropriate to the character and pattern of development in the area and do not significantly affect the amenities of surrounding properties. The strengthening of community facilities and local services will be facilitated subject to the design, scale and use of the building or development being appropriate for its location.”*

Residential development is permitted in principle.

The private open space required for an infill development is a minimum 60 square metres for a 3 plus bedroom dwelling.

Section 13.8.32 Infill and Backland Development in Urban Areas. It states:



*“An infill site is a vacant or under-used area of land between existing buildings whilst a backland site is an area of land to the rear of existing buildings. The development of infill and backland sites support the principles of compact growth and the consolidation of development in existing built up areas. When developing such lands it is important to maintain a balance between preserving existing amenities and neighbourhood character, and implementing a policy of compact development. Where opportunities arise for infill or backland development, the following considerations shall be taken into account:*

- The prevailing density and pattern of development in the immediate area including plot sizes, building heights, and the proportions of buildings;*
- The design of the building(s) shall be of a high quality and make a positive contribution to the local streetscape and character. Innovative and contemporary designs will be acceptable if it is demonstrated such designs would positively benefit the built environment;*
- Impact on the residential amenities of surrounding properties such as the potential loss of daylight or new/increased overlooking;*
- Private open space for existing and proposed properties;*
- Car parking for existing and proposed residential units shall be in accordance with the car parking standards set out in Table 13.11 in this chapter. Adequate circulation for the parking and turning of vehicles within the curtilage of sites should be provided; and*
- The location and orientation of any building(s) and windows in such building(s) shall take cognisance of the potential of adjacent infill/backland sites being developed and shall not prejudice the development potential of such lands. Whilst infill and backland development will normally be required to comply with Development Plan standards there may be circumstances where these standards can be relaxed, particularly if it will result in the development of vacant or underutilised lands in central areas of towns and villages. This will be assessed on a case-by-case basis.”*

## 5.6. **Natural Heritage Designations**

5.7. I am satisfied that having regard to minor scale and the foreseeable emissions from the proposed development 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.

## 5.8. **EIA Screening**

5.9. I am satisfied that having regard to residential nature and minor scale of the proposed development, its location on a brownfield site in a built-up urban area where public water supply and public sewerage are available and in light of the foreseeable emissions therefrom it is possible to exclude the requirement for submission of an EIAR at a preliminary stage.

## 5.10. **The Appeal**

5.11. The third party appellants have submitted an appeal, the grounds of which are summarised below. The appeal includes, amongst other enclosures, a land folio and photographs.

## 5.12. **Grounds of Appeal**

- The access to the site is via Hale Court. A Deed of Transfer was received by the Hale Court Owners from the developer on 20.09.2021, which indicates that they own the common areas and the road through Hale Court.
- They will not be seeking to have the lands 'Taken in Charge' by Louth County Council.
- No consent is provided to the applicants for access or services.
- The grass verge to be traversed to access the site is owned by Hale Court Owners and no permission is given for this.

- Three car parking spaces would be affected by the proposed development and no commitment has been offered to restore the spaces to their current condition.
- Road space is limited in Hale Court and any additional development would impinge on Hale Court property owners. Access for refuse trucks and emergency services are already constrained. Construction traffic would give rise to a risk to traffic safety and would inconvenience the residents.
- Due to the road layout and alignment, there are limited opportunities for pulling and reversing movements would increase. There is nowhere for construction traffic to park.
- Visitors to the proposed development would seek to park on Hale Court.
- Hale Court is maintained by way of private service charges, which the applicants would not pay into but benefit from.
- Bins would be marshalled on Hale Court.
- The residents have not been appropriately protected during construction.

### 5.13. Applicant Response

The agent for the first party, Doherty Design Services, has responded. Enclosures include the letter of consent from Forever Green Construction Ltd., Deed of Easement to Irish Water (12.04.2021) response is summarised below:

- As agent for Forevergreen Construction Ltd, the developers of Hale Court, and who prepared the scheme map for the Property Registration Authority, the individual plot of lands 01-08 are to the inside of the public footpath, car parking spaces and roadway serving the development.
- Furthermore, the agent has been instructed to commence work on the 'Taking in Charge' process, so as the developer can recoup the cash bond of €26,400. Items of infrastructure to be Taken in Charge include the public footpath, kerbing, public roadway and surface water drainage system. The final wearing course is to be laid complete with road markings.

- The developer has provided written permission for the applicants to access the proposed development by using this infrastructure.
- The transfer of the common areas to the Hale Court Owners Management Company 8 days before the lodgement of the application was unknown to the applicants.
- A Deed of Easement exists between Irish Water and the development company, dated 12.04.2021. Therefore, Irish Water has legal access to the services for any new planned development.
- The loss of car parking spaces for a day or two outside Houses 4 and 5 Hale Court for connection works would not have a significant impact, there being 19 car spaces in the development.
- There is no impact on car parking spaces for the access.
- There is an agreement in place with the O'Dowd Veterinary Hospital for construction vehicles. A construction and demolition waste management plan has been conditioned by the planning authority. The duration of construction is likely to be for 9 months.
- The hammer head turning area and spine road of Hale Court meet the size standards for such road infrastructure in DMURS.
- The increase in traffic is limited and the road has been designed to calm traffic.
- There is adequate space for visitor parking on the site, so no visitor parking need avail of Hale Court.
- The block wall is in the ownership of the applicants and so can undertake works to the wall.
- The applicants are prepared to contribute to the service charge to the management company of Hale Court.
- No refuse will be left on Hale Court as there is adequate space for bins to be left for collection within the site. The refuse truck can avail of the same turning movement currently required.
- The applicant facilitated the development of Hale Court on the basis of access being made available to them for their development.

- The proposed development is in accordance with sustainable development, allowing the use of serviced land with access to all local amenities, while complying with development plan standards.

#### 5.14. **Planning Authority Response**

No further comments.

#### 5.15. **Further Responses**

5.16. The Third Party's further response is summarised below.

- This is the first sight of the letter of consent signed by the developer. It is clear where the confusion in relation to the ownership of the road arose. However, the third party is the landowner of the access route and is not providing consent for its use by the applicants.
- The Deed of Easement refers to successors in title.
- The Third Party is not part of any agreement with the applicants, irrespective of any agreement that might exist with the developer.
- The proposal to located construction traffic elsewhere indicates that the road is not appropriate for this traffic.
- The applicants will not be invited to join the management company.
- The applicants' site can be accessed from the east.

### 6.0 **Assessment**

6.1. I will assess the proposed development from a design and impact perspective and then consider the matters raised in the appeal.

6.2. The proposed development is for two no. part two storey part single dwellings on lands zoned for residential use and where residential development is acceptable in principle.

- 6.3. The site is positioned in a backland location, in a very large suburban rear garden. There is a pattern of backland and infill development in the area. The area is very mixed in terms of plot sizes, configuration and house types and sizes. It is robust enough to absorb change.
- 6.4. The two proposed dwelling houses face each other around a large turning circle. The dwellings are generous in size. Private open space significantly exceeds development plan standards. The garden remaining with the original house is sufficient for its needs.
- 6.5. The design of the houses is suburban in style and the finishes match the blockwork used in Hale Court. The design is high quality and would present an attractive façade.
- 6.6. The separation distance from House B to the original dwelling is 17.637 metres at the closest point. However, there are no opposing windows at first floor. I do not consider that any significant overlooking arises. The main front elevation of the proposed dwellings are circa 23 metres apart. The rear garden depth of House A is stated as 11.083 metres.
- 6.7. House A is circa 8 metres from the neighbour to the east. House B is circa 9 metres from the neighbour to the east. Both have submitted letters of support for the proposed development. The proposed development will give rise to some overshadowing of these dwellings in the evening. However, I am satisfied that the degree of shadowing is acceptable for a suburban location.
- 6.8. Likewise, there may be some degree of loss of daylight to these dwellings. Again, I consider this loss within an acceptable range of impact, due to the separation distances.
- 6.9. House A is set on the same building line as the rear line of dwellings as Hale Court. I do not consider that there will any significant degree of overlooking, overshadowing or loss of light to these dwellings.
- 6.10. I do not consider that House A will impact on the first three houses on Hale Court, in terms of overlooking, overshadowing or loss of daylight, due to the separation distance of circa 18 metres.
- 6.11. Car parking is sufficient and the turning circle is adequate. There is space for informal visitor car parking in the turning circle.

- 6.12. The proposed development is in accordance with the development plan policy for backland and infill housing.
- 6.13. There is capacity to provide for water supply and foul drainage to serve the development. Surface water disposal has been adequately sized to cater for storm water events and includes a 20% buffer for climate change. I do not consider that the proposed development will constitute a risk of flooding to neighbouring properties.
- 6.14. I would consider that a greater density of development could be achieved on the site. However, there is a mix in density of development in the area and having of a range in house sizes and types in an area contributes to its social sustainability. Therefore, in this instance, I consider the density of development acceptable and would not recommend refusal of planning permission on this point.
- 6.15. Three main issues remaining to be considered are: the adequacy of Hale Court to cater for additional traffic, construction concerns and the legal interest of the applicants to access through Hale Court to the site.
- 6.16. The width of the carriageway is circa 5.5 metres, which is the maximum width for a local road carriage under DMURS. There is an argument given the low volume using this road, that a width of 4.8 metres would have been more appropriate, as a shared surface. Due to the width of the road, the need for a chicane to narrow the road arises. I am satisfied that the road has the capacity to cater for additional traffic.
- 6.17. The proposed access does not interfere with the car parking spaces in front of House No. 4, with the omission of the gates to the site.
- 6.18. In relation to construction, I am satisfied that the construction of the proposed development can be carried out safely and without significant interference with car parking on Hale Court. Any inconvenience during the laying of pipes will be for a limited duration. Construction hours, noise, dust and traffic can be managed by way of condition to reduce the impacts on third parties.
- 6.19. There is some confusion around the western boundary of the site. It would appear that, under planning registration reference 18695, a triangular piece of land was transferred to the applicants' land from the Hale Court site, to square off the corner adjacent to the first car parking space on the Hale Court site. Condition 5 (a) of that permission sought a detailed masterplan for the landscaping of the estate, which showed a hedge in place along part of the boundary. Under planning registration

reference 19614 for a 2 metre high wall in place of the hedging then in place, the existing wall may have been built inside the property of the applicant, under exempted development provisions in the Planning and Development Regulations, 2001 as amended. The blue line on the Site Development Plan, Site Sections and Landscaping Drawing RNOB-21-101 comes out beyond the wall and continues midway through the hedging line. This drawing shows the access into the turning circle on the site, completely within the applicants' property. The Property Registration Authority Drawing does not appear to show the same step out.

6.20. A planning appeal is not the appropriate place to determine property lines. An Bord Pleanála has no function in this regard.

6.21. Section 34 (13) of the Planning and Development Act, 2000, as amended, provides that:

*"A person shall not be entitled solely by reason of a permission under this section to carry out any development."*

The grant of planning permission does not entitle a person to carry out the permission. A planning permission can be granted even where there are matters of dispute over ownership. This is generally a matter for the courts to resolve.

6.22. However, this case is somewhat unusual in that road access and services to the lands are through third party lands. A Deed of Easement was made to Irish Water on 12.04.2021. I am satisfied that Irish Water have the legal right to lay services on Hale Court and into the site. The previous owner of the Hale Court lands provided a letter of consent with the application to allow for road access and access to services. This letter is dated 26.08.2021, when the lands were in the control of the developer. The planning application was made on 28.09.2021. However, the ownership of the land appears to have been transferred to the Third Party on 20.09.2021, as per the Stamp Certificate.

6.23. There is no condition in planning register reference 18695 that require the roads taken in charge by the planning authority. Condition 3 allows the bond for roads and services to be recouped by the developer once the roads are in a satisfactory condition. Hale Court road remains in private hands and is not a public road. There is no right of road access to the appeal site, therefore, through Hale Court at present.



6.24. In the light of the above, while the proposed development could be constructed albeit not via Hale Court (as per Section 34 (13) of the Planning and Development Act, 2000, as amended), on completion it could not be accessed from Hale Court. Any changes to provide access from elsewhere would result in the proposed development being revised. This would entail a new planning application. In these circumstances, I am of the view that the applicants, the First Party, have failed to demonstrated sufficient legal interest to access the proposed development, as it is currently configured.

## **7.0 Recommendation**

7.1. I recommend permission be refused.

## **8.0 Reasons and Considerations**

On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has the approval of the person who has sufficient legal interest to access the proposed development. In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

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Mary Mac Mahon  
Planning Inspector

15 August, 2022