



An
Bord
Pleanála

Inspector's Report

ABP-313347-22

Development	Construction of 3 dwellings with connection to public services and all associated site works.
Location	Park Road, Swinford, Co Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	21915
Applicant(s)	James Byrne.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	First Party v Conditions 1, 2, 13 & 14.
Appellant(s)	James Byrne.
Observer(s)	None.
Date of Site Inspection	8 th February 2023.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to a greenfield site of 0.201 hectares located within a well established residential area at Park Road, to the south of Swinford Town Centre. Swinford is located in east County Mayo circa 25km to the north east of Castlebar and 12km south east of Foxford.
- 1.2. Park Road, Swinford in the immediate vicinity of the site is characterised by low density residential development predominantly single storey dwellings on generous individual sites while there are more dense estates such as Brazabon Height located to the Southeast of the site. The appeal site is bounded by Park Road to the west, a dwelling and access wayleave to the south and the rear gardens of established dwellings to the north and east. There is an existing land drain along the northern boundary of the site. The appeal site is under grass is overgrown and well screened by mature boundary vegetation. There is a grass verge along the road front with a public footpath on the opposite side of Park Road.

2.0 Proposed Development

- 2.1. The application involves permission for the development of 3 no dwellings with connection to public services and all associated site works.
- 2.2. The proposed design and layout was revised in response to the Council's request for additional information including reduced dwelling footprint (157sq.m)

3.0 Planning Authority Decision

3.1. Decision

Following an in initial request for additional information Mayo County Council by order dated 23 March 2022 issued notification of the decision to grant permission subject to 14 conditions including the following which are subject of the appeal:

Condition 1. Two no houses only to be constructed by equal division of the site.

Condition 2. Development of two houses in accordance with submitted plans and particulars.

Condition 13. Development Contribution €6,138 in accordance with the Development Contribution scheme.

Condition 14. €8,000 bond to ensure satisfactory completion.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report sought additional information to include elevation details of all existing and proposed boundary treatment, a revised layout to provide for disposal of surface water to existing land drains within the site, car parking proposals, part V exemption certificate, contextual elevations and details of wayleave affecting the site.

The applicant was advised to revise the proposal to two dwellings only.

Following submission of additional information, the planner's report notes the low density zoning objective (up to 5 units per hectare). The proposal for 3 units 14.92 units per hectare would represent medium density and therefore two houses on the overall site would be acceptable. Permission was recommended for two dwellings on the site subject to a number of conditions.

3.2.2. Other Technical Reports

Architect's report considers the proposal acceptable from an architectural perspective. The planner's report refers to comment by the architect that the proposal is pleasing as it creates an oblique view of the houses in an interesting rhythm in the streetscape.

District Engineer's initial report recommends seeking additional information to include diversion of drainage to the land drains adjacent to the site. Hedging to be revised to avoid sightline vision obstruction. Second report indicates no objection.

Water Services report seeks evidence from Irish Water regarding foul sewer proposals. No issue with regard to water connection.

3.3. **Prescribed Bodies**

No submissions.

3.4. **Third Party Observations**

Submissions from the following third parties,

Padraic and Janie Mulligan, Kilkelly Road, Swinford.

Mary Paricia Moylan (nee Regan), Kilkelly Road, Swinford.

Michael Farrelly, Park Road Swinford.

Common concerns are raised summarised as follows:

- Express concerns regarding retention of access to right of way 3.3m wide to the southern end of the site which is registered for use by three separate families. Concerns that landscaping / boundary treatment will impede access.
- Concerns that disposal of surface water to the drain to the north of the site will result in increased waterlogging of fields to the rear of the site during heavy rain events due to lack of maintenance.
- Density considered inappropriate.
- Layout inappropriate giving rise to negative visual impact.
- Increased traffic resulting in hazard.

4.0 **Planning History**

No planning history on the appeal site.

5.0 **Policy Context**

5.1. **Development Plan**

I note that while the decision of the Local Authority was made in the context of the previous development plan the Mayo County Development Plan 2022-2028 (adopted on 29th June 2022) now refers.

In terms of the settlement hierarchy Swinford is designated as a Tier II - Self sustaining growth town. Self-Sustaining Growth Towns with a moderate level of jobs and services and their own labour catchment areas. These towns have good transport links and have the capacity for continued sustainable growth. These towns play an important role in supporting the social, economic and cultural life within rural communities.

The appeal site is zoned existing residential. The objective is *“To protect the amenity and character of existing residential areas.”*

At 3.3.11 Residential Densities, it is stated that:

“Higher densities will be applied to the higher order settlements of Ballina and Castlebar to align with their roles as Key Towns, subject to good design and development management standards being met. Higher densities will also be applied to Westport, in recognition of its Tier I status within the settlement hierarchy. It is important that the density of new development in towns and villages is reflective of the existing character and that growth is linked to infrastructural capacity. As such, there will be a graded reduction in residential density for Self-Sustaining Growth Towns and Self-Sustaining Towns and Villages that are commensurate to the existing built environment.”

Town and Village Housing Objective TVHO 2 is “To require residential development to demonstrate that a housing density appropriate to its context is achieved, providing for a sustainable pattern of development, whilst ensuring a high-quality living environment.”

Volume 2 of the Mayo County Development Plan sets out Development Management Standards. At 4.4 Density:

Development of higher level densities shall be appropriate to the site context and shall be assessed based on the merits of the proposal and subject to good design, compliance with both qualitative and quantitative standards, location, capacity of the site and infrastructure to absorb development, existing character of the area,

established densities on adjoining sites, protection of residential amenities, proximity to public transport, etc. The Planning Authority may use its discretion in varying these maximum density standards to take account of the character and context of respective settlements.

Table 2 sets out minimum residential density requirements which in relation to town centre / immediately adjacent to town centre medium to high density is 35 units per hectare. Inner urban suburbs outside of town centres low to medium 20 per hectare and urban periphery rural settlements low density 5 per hectare.

5.2. Natural Heritage Designations

The site is not within a designated area. The nearest such sites is the River Moy SAC (Site Code 002298) which is within 3.2km to the west of the site.

5.3. EIA Screening

Having regard to the nature of the development comprising an infill scheme of three dwellings within an established residential neighbourhood it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is submitted by the Planning Partnership on behalf of the first party. Grounds of appeal are summarised as follows:

- Appeal relates solely to conditions 1, 2 12 and 14. Board is requested to omit condition 1 and 14 and to amend condition 2 and 13.
- Core issue arising relates to the question of residential density. Planning Authority adopted an unsustainable approach to the interpretation of the Development Plan to the detriment of proper planning and sustainable development of the site.

- Decision of the Planning Authority is inappropriate, unnecessary and unsupported by Planning Policy and devoid of context for the particulars of this site.
- Condition 1 requiring the omission of one of the three dwellings results in a materially reduced scale of housing and is disproportionate.
- Condition 2 requires amendment to omit reference to the reduced scheme.
- Noting the mixed density character in the vicinity, it is estimated that circa 100 dwellings are located in the vicinity of the site with density in excess of 5 units per hectare. Extant development would be deemed to be non conforming in terms of the zoning objective of 5 units per hectare.
- Proposal is supported by National Policy and guidance including the National Planning Framework NPF, National Policy 11 and 13, Rebuilding Ireland and Housing for All. Sustainable Residential Development in Urban Areas Guidelines refers to minimum 15-20 units per hectare at the edge of small towns and villages.
- The emerging Development Plan has regard to NPF.
- Proposal strikes a balance between achieving an appropriate quantity of development on the site whilst respecting the local pattern of development and having a revitalising effect on the area and ensuring appropriate privacy.
- Swinford is designated a key town below the linked hub of Castlebar and Ballina. It would be anticipated that substantive development would be envisaged and encouraged in the town at appropriate sequential locations.
- The materiality of the third dwelling is inconsequential in terms of compliance with the Development Plan zoning objective however is materially consequential in terms of the viability of the scheme commercially and its adherence to national planning policies.
- The proposed dwellings would be serviced within a de facto housing scheme along Park Road and measuring the net density of the three dwellings would be akin to measuring the net density of a randomly selected part of a housing estate rather than considering the whole or cumulative density. A cumulative

density has been calculated on the basis of the immediate surrounds showing an extant density of 8.3units per hectare increasing to 8.6units per hectare with two additional units or to 9.3 units with three additional units proposed.

- Proposed dwellings are in keeping with the pattern of development in the area and are entirely justifiable and appropriate and there is no valid or logical reason to reduce the scale of development proposed.
- Precedent cases granted by the Board 301762-18 (Castlebar) and numerous small infill schemes granted by Mayo County Council.
- Regarding condition 13 requiring payment of €6.134. Contributions should be €2,142 for three dwellings relates to the omission of the surface water services, footpaths and roads categories levied by the local planning authority.
- Planning Authority has levied categories which are not relevant to the subject scheme as the developer would be providing the infrastructure. Scheme explicitly states that “The various categories of contribution are applied to a particular planning application only where they are relevant.”
- In relation to surface water and footpaths the developer is obliged to provide these services and a levy would amount to double charging. In relation to roads no roads are proposed. The infrastructure is in place and loading will not be discernibly affected. Substantial planning gain arises from the extension of the public footpath along the site.
- Condition 15 cash deposit of €8,000. The requirement to pay a cash deposit represents unnecessary imposition on the viability of the proposed development.

6.2. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

6.3. Observations

No submissions.

7.0 Assessment

7.1. Section 139 of the Planning and Development Act 2000 as amended provides that where an appeal is made to the Board against only a condition or conditions of a permission and where the Board is satisfied that a de novo assessment of the appeal is not required, the Board may issue a direction to the Planning Authority relating to the attachment, amendment, or removal of the condition. In the case of the current appeal against conditions 1, 2, 13 and 14 of the decision I am satisfied that the appeal accords with the criteria of Section 139 and therefore I restrict my assessment of the appeal to conditions 1, 2, 13 and 14 only.

7.2. Conditions 1 and 2 are as follows:

1. Two number houses only shall be erected on the total area of land submitted with this application and the total site area shall be divided equally between the two number sites. A revised layout plan showing compliance with this condition and the other conditions of this permission shall be submitted to and agreed in writing with Mayo County Council prior to the commencement of development/

Reason: In the interest of proper planning and development.

2. The development for two number houses only, over the entire site, shall be carried out in accordance with the documentation submitted to Mayo County Council on 25/08/21, 25.01/22 and 28/02/22, site layout plan submitted to Mayo County Council on 28/02/2022 and house plans and elevations submitted to Mayo County Council on 25/01/22 except as amended by conditions hereunder.

Reason: In the interest of proper planning and development.

7.3 The first party contends that the omission of one of the three proposed dwellings is unjustified and unnecessary and is inappropriate given the prevailing residential density in the vicinity, the urban infill context of the site and the national and local policy context which would seek to promote densification within this centrally located and fully serviced urban area. It is noted that the omission of the dwelling is based on the previous development plan which assigned a low density zoning objective to the site. I note that the current Mayo County Development Plan 2022-2028 assigns an “existing residential” zoning objective to the site which seeks “to protect the amenity and character of existing residential areas.” The Development management standards within the current Mayo County Development Plan set out minimum residential density standard for inner urban suburbs, out of town centres (low to medium) of 20 per hectare and for urban peripheries rural settlements (low density) of 5 per hectare. I note that these are specified as minimum standards. I note that the measurement of density is a somewhat crude instrument and in terms of the appeal site, a small infill site, I am inclined to concur with the first party that it is more appropriate to focus on the question of design appropriateness to established context and the qualitative assessment of the scheme. I consider that the proposal will enhance the streetscape within this urban context. The proposed dwellings provide for a reasonable standard of amenity and adequate private open space provision (311sq,m, 250sq.m and 357sq.m). I would concur with the first party that the site has capacity for the 3 dwellings as proposed and this would represent better use of serviced zoned land. On the basis of the foregoing, I recommend the removal of condition 1 and modification of condition 2.

7.4 **Condition 13** is as follows:

“The following contributions shall be paid to Mayo County Council prior to commencement of the development. This development contributions shall increase in accordance with the Wholesale Price Index for Building and Construction in January of each year from the date of grant of permission up to the date that payment is made to Mayo County Council

- €1196 for surface water services
- €714 for amenities
- €476 for footpaths
- €3038 for roads
- €714 for Community Open Space and Recreation Facilities.

Reason: To comply with Mayo County Council's Development Contribution Scheme."

7.5 The Board, when adjudicating on appeals made under Section 48, is limited solely to considering whether or not the Development Contribution Scheme has been properly applied. The calculation of the contribution as set out in the planner's report is based on permission for two dwellings.

7.6 The appellant contends that the planning authority has incorrectly applied the terms of the Mayo County Development Contributions Scheme 2004 (charges updated 2007). The first party contends that a number of categories are not relevant to the proposed development namely surface water services, footpaths and roads. It is asserted that as the developer is providing surface water infrastructure on site to outfall to the existing surface water stream along the northern boundary, and providing a footpath along the site frontage, the attachment of a charge would amount to double charging. It is asserted that as the road is in place and will not be significantly impacted in terms of additional loading this charge is not relevant.

7.7 I note that the Planning Authority did not respond to the grounds of appeal.

7.8 Schedule 1 of the Mayo County Development Contribution Scheme 2004 (charges updated 2007) sets out the development contribution amounts to apply throughout the county. Section 2.2 states that in determining the amount of contribution, Mayo County Council has had regard to the actual estimated cost of providing the classes of specific infrastructure. Section 4 states that the council at its own discretion may

allow the payment of a reduced rate where the payment of the contribution would not be just and reasonable having regard to the limited extent of development, the limited cost of the development and other exceptional considerations. The amount payable for any reduced contribution under this scheme shall not be less than one quarter of the amount indicated in column 2 of schedule.

7.9 The figure calculated by the appellant proposes a revised contribution based on omission of surface water, roads and footpaths elements of the scheme on the basis that the development provides infrastructure for surface water discharge and provision of footpaths across the site frontage and as the proposal is accessed onto an existing road. I note that as set out within the development contribution scheme the contribution calculation is based on the actual estimated cost of providing the classes of specific infrastructure and facilities and applies throughout the county. I have reviewed the Mayo County Development Contribution Scheme and note that there is no specific provision of exemption or reduced contribution which could apply to the current case. I consider that it is appropriate that the full rates of all relevant categories of infrastructure should apply. In view of connection charges which apply for water related services levied by Irish Water I note that it is not appropriate to attach the rates for such services which are no longer provided by the council, and I note that no such charges were included in condition 13. A housing estate take over charge is also not relevant to the proposed development.

7.10 On the basis of the foregoing I calculate the contribution applicable in this case accordance with the terms of the Mayo County Development Contribution Scheme 2004 (charges updated 2007) to be as follows:

Category of Contribution	Amount of Contribution in € per unit	Rate Applicable
Water Services	€1,191	N/A Irish Water Function

Sewerage Services	€1787	N/A Irish Water Function
Surface Water Services	€596	596 x 3 = €1788
Amenities	€357	357 x 3 = €1071
Roads	€1519	1519 x 3 = €4,557
Footpaths	€238	€238 x 3 = €714
Community Open Space and Recreational facilities	€357	357 x 3 = €1,071
Housing Estate Take-over	€238	N/A
Total		€9,201

7.11 As regards Condition 14 requiring the provision of a cash deposit of €4,000 per dwelling I consider that there is merit in the first party argument that the application of a security deposit is not warranted given the small scale, infill nature of the scheme. On this basis I consider that it is appropriate that the Board direct the Planning Authority to omit condition 14.

7.12As regards Appropriate Assessment having regard to the nature and scale of the proposed development in a fully serviced built up urban area, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

8.1. I have read the submissions on file, visited the site, and have due regard to the provisions of the Mayo County Development Plan 2022-2028 and all other matters arising. Having regard to the nature of the condition the subject to the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below directs the said Council under Section 139

of the Planning and Development Act 2000 to **omit conditions 1 and 14** and to **amend conditions 2 and 13 (following above amendments condition 12)** as follows:

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, and the location within the built up urban area and to the pattern of development in the vicinity, and the zoning objective pertaining, it is considered that the proposed development would represent an appropriate densification of the site, would not impact unduly on the residential amenities of dwellings in the vicinity and would therefore be in accordance with the proper planning and sustainable development of the area.

The planning authority correctly applied the terms of the development contribution scheme adopted under section 48 of the Planning and Development Act 2000, as amended, being the Mayo Council Development Contribution Scheme 2004(charges updated 2007). In light of omission of condition 1 reducing the density it is necessary to amend the contribution figure applied under condition number 13. (now condition 12)

Revised condition 2 (Now Condition 1 following omission of condition 1)

The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 25th day of January 2022 and 28th day of February 2022 except as may otherwise be required in order to comply with the following conditions. Where such conditions required details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

Condition 13 (now condition 12)

The developer shall pay to the planning authority a financial contribution of €9,201 (nine thousand two hundred and one euro) 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. The application of any indexation required by this condition 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.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Bríd Maxwell
Planning Inspector

14 March 2023