



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313925-22

---

<b>Development</b>	Point of Detail - Condition number 15 attached to ABP-303462-19 (24 dwellings and associated site works).
<b>Location</b>	Mullingar Road, Kinnegad, Co Westmeath.
<b>Planning Authority</b>	Westmeath County Council
<b>Planning Authority Reg. Ref.</b>	186250
<b>Applicant(s)</b>	Sean O'Hagan
<b>Type of Application</b>	Point of Detail
<b>Planning Authority Decision</b>	Grant with conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Peppard Investments Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30/01/2023
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. The subject site is located in the town of Kinnegad, Co. Westmeath. It is located in close proximity to the town centre in a residential area. It is accessed via the Hawthorns housing estate off the Mullingar Road (R148).
- 1.2. There are two duplex apartment blocks on the site. The units are complete and appear to be occupied. The estate is tarmacadamed, open space and landscaped areas are complete/
- 1.3. To the north there is an empty field which appears to have been the subject of earthworks.

## 2.0 Development

- 2.1. Under appeal reference ABP -303462 19, the Board granted planning permission on the 17<sup>th</sup> of May 2029 for the following development:

*12No. two-bedroom apartments and 12No. 3bedroom duplex apartments, a new vehicular and pedestrian entrance on the north-west boundary from the Mullingar Road, connection with existing services, car parking, bin storage, bicycle storage, boundary treatment and all ancillary site works at Mullingar Road, Kinnegad.*

Of relevance are the following conditions:

4. The areas of public and communal open space shown on the lodged plans shall be reserved for such use and shall be levelled, siled, seeded and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any dwellings are made available for occupation and shall be maintained as public and communal open space by the developer **until taken in charge by the local authority.** **(my emphasis)**
5. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

- (a) A plan to scale of not less than 1:200 showing –
- (i) Existing trees, hedgerows, specifying which are proposed for retention as features of the site landscaping
  - (ii) The measures to be put in place for the protection of these landscape features including the trees along the eastern boundary during the construction period
  - (iii) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder and which shall not include prunus species.
  - (iv) Details of screen planting including to the northern boundary which shall not include cupressocyparis x leylandii
  - (v) Details of roadside/street planting which shall not include prunus species
  - (vi) Hard landscaping works, specifying surfacing materials, furniture, play equipment and finished levels.
- (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment
- (c) A timescale for implementation
- (d) Details of all proposed boundary treatments at the perimeter of the site, including heights, materials and finishes. 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.

**Reason:** In the interest of residential and visual amenity. **(my emphasis)**

14. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage and all areas

not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.

(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity

15. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of watermains, drains and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

### 3.0 Policy Context

In Westmeath certain private housing developments (apartment complexes and duplex units) will have a condition in the planning permission that a property constituted management company be established for the purpose of maintaining the public lighting, roads, footpaths, parking areas, services and open spaces within the apartment complex. The said public lighting, roads, footpaths etc shall be conveyed to the Management Company.

If a management company is proposed for a development, it will be a requirement of the planning permission that the roads, footpaths, services etc are constructed in

accordance with the technical standards outlined in the documents. Any security lodged with the planning authority for such a development will not be released until the satisfactory completion of the works and said roads, footpaths, services etc are conveyed to the management company.

## 4.0 **The Appeal**

### 4.1. **Grounds of Appeal**

This appeal relates to An Bord Pleanála's grant of permission under appeal reference 303426-19. There is a disagreement regarding the following:

- WCC Waiver of OMC 303462-19
- Proposed Taking In Charge Map 303462-19
- A Copy of correspondence from Westmeath County Council relating to the issue.

### 6.1.1 **Background**

In November of 2019 Peppered Investments 6 Ltd began the development of 24No. two and three bedroom duplex units granted under appeal No. 303462-19. Tuath Housing Association, an Approved Housing Body, are contracted to purchase the development. Peppard made an application to Westmeath Co.Co. for a waiver of Condition No. 15 of the Board order. It was granted in August 2021 and I attach confirmation of the waiver received from the planning authority. Subsequent to receiving the wavier, Peppered Investments 6 Ltd were informed by Westmeath Co.Co. that multi-unit and duplex apartment developments are not taken in charge by the local authority.

Peppered Investments 6 Ltd wish to appeal Condition 14(a) of the grant of permission for the following reasons:

- Tuath intend to take in charge everything except the roads, lights and footpaths as they cannot get funding for these areas. Their funding comes from the Housing Finance Agency and the CALF.

- Conditions 4, 5 and 15 of the grant of permission all mention taking in charge of the development by the local authority.

#### 6.1.2 Supporting Documents

1. A Letter from Westmeath Co. Co. to Peppered Investments 6 Ltd, dated 09/ August/ 2021, stating that a management company is not required before the occupation (Condition No. 14 of the Board Order) where the completed development is owned by Tuath Housing Association.
2. An email from Westmeath Co. Co., dated 13/ September/ 2021, stating the internal financial issues within Tuath Housing Association are solely their business, and Westmeath Co. Co. cannot comment on such matters. In accordance with both Westmeath Co. Co's Taking In Charge Policy and the Multi-Unit Developments Act 2011, Westmeath will not be taking any element of the development in charge.

#### 4.2. **Planning Authority Response**

Westmeath Co. Co. made a comprehensive submission to the Board on the 22<sup>nd</sup> of July 2022 in response to Peppered Investments 6 Ltd submission/ referral. In short, the proposal consist of two apartment blocks which were granted planning permission by Westmeath Co. Co. subject to a Management Company to be put in place in accordance with the Council's Taking In Charge Policy.

The decision was appealed by a third party to An Bord Pleanala (Reference ABP-303462-19) and the decision upheld the planning authority's requirements of putting in place a management company as set out under Condition 14 (a0 and (b)).

In the submission by Peppered Investments 6 Ltd, the Referrer references Condition No. 15 of the Bord's decision which actually refers to the requirement to lodge a bond with the planning authority to ensure the satisfactory completion of the development. The planning authority did not waive the condition as stated but reduced the value of the bond to be lodged ( 144,000 Euro to from 50,000 euro bond) based on the advanced progress of the construction work at a point in time and the developer has failed to lodge the reduced bond to date (July 2022). The correspondence on the file indicates the following:

- A letter dated 4<sup>th</sup> of October 2021 to Peppard Investments confirming that Westmeath Co. Co. will accept receipt of €50,000 as bond requirement for compliance of Condition No. 15 of the Board's decision.
- Copies of correspondence between the applicant and the local authority.

## 5.0 Assessment

- 5.1. The development for 24 No. duplex units in Kinnegad was granted planning permission in 2029 under appeal reference 303462-19, is complete and would appear to be occupied at the time of my inspection in January 2023. Tuath Housing secured funding from the Housing Finance Agency to purchase the 24No. duplex units. The Housing Finance Agency do not provide funding for roads and services, and Tuath cannot take ownership of the roads, footpaths, lighting and carparking spaces.
- 5.2. Tuath are a social housing provider. The applicant had sought to have Condition No. 14 waived because Tuath cannot take ownership of the roads, footpaths, lighting and carparking spaces. The applicant was informed by Westmeath Co. Co. it is contrary to council policy to take in charge housing developments that consist of apartments and duplex units.
- 5.3. Condition No. 14 (a) clearly states the estate would be taken in charge.
- 5.4. The applicant set up a company in order to comply with the planning conditions called An Garran Geal Management Company Ltd (Reg No. 696140) to manage the roads, footpaths, lighting and carparking spaces. Tuath Housing are satisfied to manage the green areas and bins. However the management company arrangement is not acceptable to Tuath in the long-term, the estate has to be taken in charge by the local authority at some stage.
- 5.5. The applicants state a bond of €50,000 has been agreed between the applicant and Westmeath Co. Co. until the development is taken in charge by Westmeath Co. Co. The current position is a standstill, and Tuath may not enter into contract to purchase the units. On one hand the planning permission states the estate should be taken in charge and a bond has been agreed with Westmeath Co. Co. On the other hand

Westmeath states, it is against Westmeath County Council Taking In Charge Policy, to take in charge multi-unit and duplex apartment units.

5.6. The applicant wishes to appeal Condition No. 14 (a) of the grant of permission:

***(a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.***

Tuath intend taking in charge everything except the roads, lights and footpaths as they cannot get funding for these areas. Conditions 4, 5 and 15 cited above of the grant of permission all mention taking in charge of the development by local authority.

The applicant also wishes the Board to waiver Condition No. 15 of the Board Order relating to the payment of a security bond of €144,000.

5.7 I examined the planning authority's conditions attached to the original permission granted by Westmeath Co. Co. on the 12<sup>th</sup> of December 2018 under planning reference 18/6250. Condition No. 7 related to common areas of the development to be transferred to a properly constituted Management Company with the responsibility for the maintenance of same thereafter. It was the Board who imposed the terminology relating to 'taking in charge' into a number of the conditions when the decision was the subject of a third party appeal.

5.8 I note the Council's Taking In Charge Policy and extract of same was submitted on 22<sup>nd</sup> of July 2022 to the Board by the planning authority. I also note that the Council did not waive the security bond requirement as per Condition No. 15 of the Board's decision but, the planning authority did reduce the value of the bond to be lodged from €144,000 to €50,000. At that time of this appeal, there was no bond provided by the applicant to the planning authority.

5.9 According to the documentation, the purchaser, Tuath will take in charge everything except roads, lights and footpaths because these are not included in their funding, implies the applicant Peppard Investments 6 Ltd must set up a Management Company to look after these residual communal areas. The registered name of the company is An Garran Geal Management Company Ltd, registered number 696140. It is Westmeath's Taking in Charge Policy not to take in charge communal areas



associated with apartment and duplex developments. I believe the Board is not in a position to counter this policy as it is beyond the remit of the Board to enforcement the Taking In Charge policy of any local authority. The policy may change at a future date, or the planning authority may decide to take in charge these areas, but it is not something the Board can impose on this particular development, because it is beyond the jurisdiction of the Board. The conditions were included in good faith and normal planning practice with such developments. The Board was not made aware of Westmeath's Taking In Charge policy during the course of assessing ABP-303462-19.

- 5.10 Condition No. 15 of the Board's decision related to the lodgement of a cash deposit, a bond of an insurance company or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of watermains, drains and other services required in connection with the development. As the local authority do not intend taking in charge any of the infrastructure and common areas, the requirement for the payment of a security bond does not apply. Therefore, the applicant does not need to submit a security bond because the development is not going to be taken in charge it will be maintained by a management company.

## 6.0 Recommendation

- 6.1. Having regard to the fact, it is against Westmeath Co. Co.'s Taking In Charge policy to take in charge apartment and duplex units, I recommend the applicant should not submit a security bond to the local authority in compliance with condition No. 15 of ABP 303462-19.

---

Caryn Coogan  
Planning Inspector

15<sup>th</sup> of March 2023