



An
Bord
Pleanála

Inspector's Report

ABP-314752-22

Development	Construction of six three storey townhouses.
Location	O'Neill Place, Tullamore, Co. Offaly.
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	21555
Applicant	James O'Connor
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Anne Farrelly
Date of Site Inspection	4 th August 2023
Inspector	Dolores McCague

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	3
3.3. Further information.....	4
3.4. Further Reports:.....	5
3.5. Third Party Observations	6
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Design Standards for New Apartments	7
5.3. Natural Heritage Designations	7
5.4. EIA Screening	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Applicant Response	9
6.3. Planning Authority Response.....	10
7.0 Assessment.....	10
7.2. Appropriate Assessment.....	10
7.3. Development Plan Policy	11
7.4. Residential amenity.....	12
8.0 Recommendation.....	13
9.0 Reasons and Considerations.....	13

1.0 Site Location and Description

- 1.1.1. The site is located at O'Neill Place, Tullamore, Co. Offaly. The site fronts onto a public car-park in the centre of Tullamore town. It is accessed via a controlled height entry to the car-park. The site, which appears to be overgrown and derelict, has a boundary to the car park formed by a wall and a pair of sheet metal entrance gates and, at the south eastern end a small building.
- 1.1.2. The site is given as 0.044 ha.

2.0 Proposed Development

- 2.1.1. The application dated, 10th September 2021, is for permission for:
Construction of 6 no. three storey, 3 bed townhouses, associated car parking, bike racks, and all associated site works and services.
- 2.1.2. Axis Architecture made the application on behalf of the applicant and drawings by Axis Architecture accompanied the application.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decision, dated 8th September 2022, was to grant permission subject to 16 conditions, including:
2 – revised car parking, 3 – footpath, EV carparking etc, 4 – external finishes, 5 - undergrounding of cables, 6 – development charge, 7 –Irish Water, 8 – photographic record of the structure shown on site on historic maps, 9 - surface water, 10 – boundary walls, 11 – a) obscured glazing, b) landscaping, 12 - naming, numbering and signage, 13 – street lighting, 14 – management company, 15 – bond, 16 – part V.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

- 3.2.2. There are a number of planning reports on the file. The first series of reports are dated 4th November 2021, one by the Executive Planner recommending refusal, and a contrary report by the Acting Senior Executive Planner recommending further information, which issued.
- 3.2.3. Other Technical Reports
- 3.2.4. Senior Executive Architect, 13th October 2021, supportive.
- 3.2.5. Chief Fire Officer, 11th October 2021 – no objection.
- 3.2.6. Environment Water Services, 18th October 2021 - that further information is required. This is incorporated in the request which issued.
- 3.2.7. Tullamore Municipal District, 21st October 2021 - that further information is required. This is incorporated in the request which issued.
- 3.2.8. Road Design, 26th October 2021 – that further information is required. This is incorporated in the request which issued.
- 3.2.9. Housing Department, Part V compliance report, 3rd November 2021 – that further information is required.

3.3. Further information

- 3.3.1. A further information request on 9 points issued on 4th November 2021, including:
 - 1 a) car parking, b) footpath and c) surface water.
 - 2) correspondence between applicant and Irish Water.
 - 3) part V.
 - 4) landscaping and elevational materials.
 - 5) screen along the north-western elevation of the proposed patio area at third floor.
 - 6) lifelong adaptability / access statement per development management standard DMS-06 Life Long Adaptability.
 - 7) bicycle parking.
 - 8) revised access to the rear providing additional security and privacy for the proposed units.
 - 9) invitation to address third party observations.

3.3.2. A response to the further information request was received on 5th September 2022, including:

- The site is directly off O'Neill car park. This lot contains 104 spaces used daily by the people of Tullamore town. The proposal looks at decreasing the lot size from 104 to 89 to allow for a 2 metre wide pedestrian path to link with High Street. The site's central location in the town centre, 10 minutes walk from the train station and 2 minutes walk from the nearest bus stop, fits under the heading (4.19) accessible urban location, in the design standards for new apartments. Car parking standards can be minimised. A 2m wide footpath will tie into the footpath from High Street, at the Council's request. It will have adequate lighting. A new pedestrian crossing is proposed, to join the path at Heffernan Auctioneers. The third floor south western elevation takes advantage of midday/evening in the outdoor space, public space is created at ground level. A 2.2m high, toughened frosted glass screen on the north western elevation, will ensure no overlooking of observer's property. An access lane was granted to the adjoining property under a previous permission (16/196). This lane will have a gate that will restrict access. The main purpose is for refuse collection.
- Correspondence: from Irish Water offering connections to public services, and from Offaly County Council consenting to the application, which includes their lands.
- Revised drawings.

3.4. Further Reports:

3.4.1. Tullamore Municipal District, 8th September 2022 – conditions. Noting the removal of a significant amount of parking spaces, being the spaces closest to High Street which are currently occupied daily.

3.4.2. The second planning report, 8th September 2022, recommending permission, which issued, includes:

Noting that the Design Standards for New Apartments 2020, states that:

An apartment, for the purpose of these guidelines, may be defined as “a self-contained residential unit in a multi-unit building with grouped or common access”.

The use of the word may provides flexibility regarding the forms of urban dwelling which fit under the rubric of the apartment guidelines. The planner considers that own door developments which can access the outside world with independent front doors can be considered apartments/maisonettes.

Satisfied with FI responses.

3.5. Third Party Observations

3.5.1. Third party observations on the file have been read and noted.

4.0 Planning History

This site:

16/196 permission granted to James O'Connor for a 2, 3 and 4 storey commercial development with ground floor retail and upper level office space.

22/279 permission granted (6th September 2022) to James O'Connor for a 2, 3 and 4 storey commercial development with ground floor retail and upper level office space.

Adjoining:

TU211388 permission granted to John Spollen for new toilets and entrance to lounge.

5.0 Policy Context

5.1. Development Plan

5.1.1. Offaly County Development Plan 2021-2027 is the operative plan. Relevant provisions include:

DMS-18 Private Open Space Minimum Standards for Houses

One bedroom 48 m²

Two bedroom 55 m²

Three bedroom 60 m²

Four bedrooms or more 75 m²

DMS-19 Private Open Space Minimum Standards for Apartments

Studio 4 m²

One bedroom 5 m²

Two bedrooms (3 person) 6 m²

Two bedrooms (4 person) 7 m²

Three bedrooms 9m²

DMS-20 Private Open Space Reduced Standard – Housing for Older People

A reduced minimum standard of private open space, below the standards laid out in DMO-18, will be accepted for 1 and 2 bedroom houses for older people, where it is demonstrated that the design of the dwellings is with older people in mind.

5.2. Design Standards for New Apartments

5.2.1. Design Standards for New Apartments (DSFNA) (2018)

Footnote page 2:

An apartment, for the purpose of these guidelines, may be defined as “a self-contained residential unit in a multi-unit building with grouped or common access”.

5.2.2. Design Standards for New Apartments 2020

Footnote page 3:

An apartment, for the purpose of these guidelines, may be defined as “a self-contained residential unit in a multi-unit building with grouped or common access”.

5.2.3. Design Standards for New Apartments 2023

Footnote page 8:

An apartment, for the purpose of these guidelines, may be defined as “a self-contained residential unit in a multi-unit building with grouped or common access”.

5.3. Natural Heritage Designations

5.3.1. The closest Natura site is Charleville Wood SAC, (site code 000571), located c 1.35km straight line distance to the west of the subject site.

5.4. EIA Screening

- 5.4.1. The development is sub-threshold: Schedule 5 Development for the purposes of Part 10: Part 2. Item 10. Infrastructure projects (b) (i) construction of more than 500 dwelling units; being a development of 6 dwellings. The location is on zoned, serviced land within a town in a location with no notable sensitivities.
- 5.4.2. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Anne Farrell has submitted this appeal, the grounds include:
- The proposed development is in the curtilage of her protected structure.
 - The proposed development is out of scale and out of character with the area.
 - There is no green space for residents.
 - No public amenities.
 - No pedestrian crossings.
 - It will add to congestion on the Main St.
 - Neighbouring houses have been changed to multi occupancy.
 - Additional pressure on local services such as water.
 - The outdoor space at third floor is unsuitable.
 - The outdoor space of No 1 impacts her privacy.
 - Overlooking, overshadowing and privacy impact.
 - Condition 11 does not protect her privacy.

- The right of way / laneway which did not previously exist, compromises her security and the opening to the car park creates an opportunity for anti-social behaviour.

6.2. Applicant Response

6.2.1. A response on behalf of the applicant was made by Axis Architecture, which includes:

- Appellant has mistakenly identified the wrong property as her property. The correct property is shown on a map.
- The proposed development is not within the curtilage of a protected structure.
- Buildings in the area are predominantly 3 storeys.
- Development plan objectives are quoted:

CSO-05 It is an objective of the Council that development proposed on new residential zoned land and on mixed use / town or village centre zoning should proceed on a sequential basis with priority given to lands closest to the centre and / or closest to key transport infrastructure.

SSP-06 It is Council policy to strategically prioritise the development of Tullamore to underpin its role as a designated Key Town and driver of economic development for the county.

SSP-07 It is Council policy to require sustainable, compact, sequential growth and urban regeneration in Tullamore by consolidating the built-up footprint through a focus on regeneration and development of town centre infill and brownfield sites, and encouraging regeneration of underutilised, vacant and derelict lands for residential development and mixed use to facilitate population growth.

- The site is located in a car park. It forms part of opportunity site 3.
- The car park accesses a Secondary school with 620 pupils, increasing to 750 with the new extension. It has 104 parking spaces and is in constant daily use. The proposed development improves the urban edge of this space and increases passive supervision and community engagement. This type of

urban development is encouraged and supported throughout the development plan.

- The third floor balcony is screened and prevents any overlooking of appellant's property.
- It allows for private open space in the centre of town.
- Shadow studies completed on a 4 storey office block already approved on the site highlighted that there would be no significant overshadowing. That building is taller than the proposed residential building.
- The right of way is to facilitate access to the rear of this site. It does not extend to the appellant's site. It will be gated, completely private and not subject to anti-social behaviour.
- The proposed development poses no significant impact on the appellant's property.
- It provides much needed housing in an urban area close to services and jobs.
- It is supported by many policies and objectives of the county development plan.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority have responded to the grounds of appeal, requesting the Board to uphold their decision.

7.0 Assessment

- 7.1.1. I consider that the main issues which arise in relation to this appeal are appropriate assessment, development plan policy, and residential amenity and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

- 7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

7.3. Development Plan Policy

- 7.3.1. The Offaly County Development Plan 2021-2027 which is the operative plan includes minimum private open space standards for houses under DMS-18. These require that a three bedroom house is provided with a minimum open space area of 60 m².
- 7.3.2. This is referred to in planners reports, which nonetheless recommend a further information request on other issues and subsequently recommended permission.
- 7.3.3. The development plan standard is specific. If it made reference to having regard to Guidelines, from which the stated standards emanate (whether superceded or not), it would allow the planning authority decision makers the flexibility they are seeking to apply in the present case.
- 7.3.4. As the development plan policy regarding the requirement for minimum private amenity space is specific, there is no room for flexibility.
- 7.3.5. Material contravention procedures have not been implemented.
- 7.3.6. I do not accept the argument made in the planner's report recommending permission, that the use of the word 'may' provides flexibility regarding the forms of urban dwelling which fit under the rubric of the apartment guidelines, allowing the planning authority to define the proposed townhouses/maisonettes as apartments. Three versions of the Design Standards for New Apartments 2018, 2020 and 2023 provide a definition for an apartment: 'an apartment, for the purpose of these guidelines, may be defined as a self-contained residential unit in a multi-unit building with grouped or common access'. This definition does not, in my opinion, allow for the interpretation as 'including townhouses/maisonettes'.
- 7.3.7. I share the apparent concern that the development plan standards for minimum amenity space provision are not appropriate to this inner urban location. However the only flexibility in the application of standards, provided for in the development plan, applies to housing for older people, in the case of 1 and 2 bedroom houses where it is demonstrated that the design of the dwellings has older people in mind.

- 7.3.8. The subject development is of 3 bedrooms units and is also of multiple level units and clearly not designed with older people in mind.
- 7.3.9. It appears to me therefore that the proposed development materially contravenes the Offaly County Development Plan 2021-2027 and this is a reason to refuse permission.

7.4. Residential amenity

- 7.4.1. Overlooking, overshadowing and security are the main impacts of concern to the appellant. There are other concerns expressed regarding congestion at the junction with the public road and impact on services, such as water pressure. These latter concerns can not be sustained for a development of this scale in the centre of the town of Tullamore.
- 7.4.2. The appellant has responded to the overlooking concern, stating that the balcony will be screened and will not overlook the property concerned. I am satisfied that this is the case.
- 7.4.3. The appellant has responded to the overshadowing concern stating that shadow studies were completed on a 4 storey office block already approved on the site which highlighted that there would be no significant overshadowing. That building is taller than the proposed residential building.
- 7.4.4. Planning permission was granted (Ref 22/279) for a 2, 3 and 4 storey commercial development with ground floor retail and upper level office space, on this site, on the 6th September 2022. Details of that application have been provided by the planning authority and are attached to this file. It was accompanied by a shadow study which indicated that significant overshadowing of the appellant's property will not occur.
- 7.4.5. The appellant has responded to the security concern stating that the right of way will be gated, completely private and not subject to anti-social behaviour. It's purpose is to facilitate access to the rear of this site. It does not extend to the appellant's site.
- 7.4.6. The right of way extends to the property adjoining the appellant's, in addition to providing access to the proposed units in the subject development. Although this affords access closer to the appellant's property, it does not facilitate anti-social behaviour or unauthorised access to the appellant's property. It is not in the interests

of future owners/occupants of the subject properties to allow unrestricted access to their properties.

- 7.4.7. In my opinion residential amenity should not be a reason to refuse or modify the proposed development.

8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that the planning application be refused for the following reasons and considerations.

9.0 Reasons and Considerations

The proposed development materially contravenes the Offaly County Development Plan 2021-2027 because the proposed private open space provision (given as 11.26m² to 12.84m² per dwelling) fails to meet the minimum standard of 60 m² open space for a 3 bedroom house, accordingly the proposed development would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Planning Inspector

23rd August 2023

Appendices

Appendix 1 Photographs

Appendix 2 Offaly County Development Plan 2021-2027

Appendix 3 Design Standards for New Apartments (DSFNA) (2018)