



An
Bord
Pleanála

Inspector's Report

ABP-314843-22

Development	Construction of two storey detached house and associated site works
Location	Side of 114 Blackcastle Estate, Navan, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	22886
Applicant	Pat Fox
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Kieran Walsh & Finola O' Sullivan
Observer(s)	None
Date of Site Inspection	24 th June 2023
Inspector	Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site is located to the side/north-west of 114 Blackcastle Estate, an established residential area, c. 1.5 km north-east of the centre of Navan, Co. Meath.
- 1.2. The appeal site is relatively flat and is bound by a wire fence and hedge/trees. The adjoining site to the side/north-west comprises a vacant plot. 114 Blackcastle Estate is indicated as being within the applicant's control/ownership, as depicted by the blue line boundary. The rear of the appeal site is traversed by electricity lines and a foul sewer.

2.0 Proposed Development

- 2.1. The proposed development comprises;
 - A detached, two storey, 4 bedroom house (stated floor area – 127 sqm).
 - Material finishes to the proposed house comprises smooth plaster and brick for the external walls and black/dark blue colour roof tiles.
 - The proposed house has a pitched roof with ridge height of c. 8.1 metres.
 - A vehicular entrance is indicated to the front/south-west of the appeal site and the dwelling is served by 2 no. car parking spaces.
 - Boundary treatments comprise;
 - a low wall to the front/west;
 - a 0.9 metre high railing and hedge, and 2 metre high screen wall along the side/northern boundary;
 - a 2 metre high, concrete post and plank fence, and hedge along the rear/eastern boundary; and,
 - retention of part of the existing side/southern site boundary with 114 Blackcastle Estate.

3.0 Planning Authority Decision

3.1. Request for Further Information

Prior to the decision of the Planning Authority to grant permission for the proposed development, the Planning Authority requested Further Information.

3.1.1. Further Information was requested on the 22nd August 2022 as follows:

- Item 1 – Set proposed house back on the site in line with 114 Blackcastle Estate.
- Item 2 – Re-advertise if Further Information is significant in nature.

3.1.2. Further Information submitted on 30th August 2022

- Item 1 – Revised site plan (*Drawing No. 2022-08A*) submitted indicating the setting back of the proposed dwelling in line with the adjacent property, 114 Blackcastle Estate.
- Item 2 – NA.

3.2. Decision

The Planning Authority issued a Notification of Decision to GRANT permission on the 21st September 2022 subject to 11 no. conditions. The following conditions are of note;

C2 – material finishes to be agreed. Brick or reconstituted stone shall not be used.

C7 – gable window on south elevation shall comprise obscure glazing.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The first report of the Planning Officer generally reflects the Further Information request. The report also notes that the site is considered to be an underutilised piece of zoned land, that the site does not appear to be zoned open space as per the County Development Plan and historic applications, and that the principle of residential development on the site is acceptable.

3.3.2. The second report of the Planning Officer notes that the applicant's response to the Further Information request is considered acceptable.

The report of the Planning Officer recommends a GRANT of permission consistent with the Notification of Decision which issued.

3.3.3. Other Technical Reports

Water Services: No objection to the proposed development subject standard conditions.

3.4. **Prescribed Bodies**

Irish Water (now Uisce Éireann): No objection to the proposed development subject standard conditions.

3.5. **Third Party Observations**

39 no. observations were noted by the Planning Authority. The observations raised concerns in relation to the use of an area of open space for housing/loss of green space/play area, and note that the site is maintained by residents.

4.0 **Planning History**

Appeal Site:

None.

5.0 **Policy Context**

5.1.1. **Ministerial Guidelines**

Having regard to the nature of the proposed development and to the location of the appeal site, I consider the following Guidelines to be pertinent to the assessment of the proposal.

- Quality Housing for Sustainable Communities - Best Practice Guidelines for Delivering Homes Sustaining Communities (2007).

- Appropriate Assessment of Plans and Projects in Ireland, Guidelines for Planning Authorities, (2010).

5.2. Development Plan

5.2.1. The Meath County Development Plan 2021-2027 is the relevant development plan, under which the appeal site is zoned 'A1' Existing Residential, with a zoning objective *'to protect and enhance the amenity and character of existing residential communities'*.

5.2.2. The provisions of the Meath County Development Plan 2021 - 2027 relevant to this assessment are as follows:

- **DM OBJ 18:** A minimum of 22 metres separation between directly opposing rear windows at first floor level in the case of detached, semi-detached, terraced units shall generally be observed.
- **DM OBJ 21:** A minimum distance of 2.3 metres shall be provided between dwellings for the full length of the flanks in all developments of detached, semi-detached and end of terrace houses.
- **Table 11.1** Minimum Private Open Space Standards for Houses (75 sqm for houses with 4 bedrooms or more).
- **DM OBJ 42:** Infill development shall take account of the character of the area and where possible retain existing features such as building line, height, railings, trees, gateways etc.

Section 11.5.21 - Corner/Side Garden Sites – The Council will require corner site /side garden development proposals to have regard to the following criteria: size, design, layout, building line and the relationship with existing dwellings and immediately adjacent properties; external finishes; accommodation standards for the occupants; car parking for existing and proposed development; private open space for existing and proposed development; Development Plan standards for dwellings; side/gable and rear access/maintenance space, where possible.

- **DM OBJ 89:** Car parking shall be provided in accordance with Table 11.2 and associated guidance notes (2 per conventional dwelling).

5.3. Natural Heritage Designations

The appeal site is not located within or close to any European Site.

5.4. EIA Screening

Having regard to the limited nature and scale of the proposed development, 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 at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal by Kieran Walsh, 122 Blackcastle Estate and Finola O' Sullivan 120 Blackcastle Estate, c/o John Callaghan Civil Engineer, against the decision to grant permission. The grounds for appeal may be summarised as follows;

- The rear site boundary encroaches on an adjacent plot of residentially zoned land. A rear garden depth of 7.8 metres was indicated at Further Information stage, and residential development on the adjacent land would have to demonstrate a 22 metre window to window separation distance at first floor level, and therefore the proposal would have consequences for the building line and rear gardens of the adjacent zoned land. The appellants draw the Board's attention to *Frescati Estates v. Walker* 1975 I.R. 177.
- There is a prospect of a road being provided through the green space. Any proposal on the site should take account of this, facilitating a road/footpath in compliance with DMURS standards, and a double fronted building to overlook such a road.
- The proposal would interfere with the maintenance and reconstruction of a sewer which is located on the site.
- The applicant must provide sufficient information to allow the Planning Authority to undertake an assessment of the proposed development in the context of the EIA and Habitats Directive.

- The appeal site was fenced prior to the erection of the site notice, contrary to Article 9 (1) (x) of the Planning and Development Regulations, 2001.
- The Planner's reports indicate that there is no planning history on the site and no site layout for the dwellings in the vicinity can be found, however it can be reasonably assumed that the site was part of the open space under the parent permission for the estate. The appeal site has been used as open space for 50 years, and this use is derived from the original permission for the estate. The applicant has not demonstrated that that the site was not part of the original scheme of open space, which is substantially less than the 15% threshold set out in the Meath County Development Plan 2021-2027.
- Land Registry records indicate that the applicant and consenting landowner have owned the land since 2015, a period less than the 12 years associated with adverse possession.
- The appellants assert prescriptive rights over the site for use as open space. The Board are asked to note the date 1st April 2015 when the site was registered to the owners, and are requested to make an application to the High Court under Section 50 (1) (i.e. where a question of law arises the Board may refer the question to the High Court for decision).
- The Blackcastle Estate, including areas of open space, are zoned A1 'Existing Residential' in the Meath County Development Plan 2021-2027. The open space use is associated with the amenity and character of the residential community.
- The Board are referred to the Development Plan Guidelines for Planning Authorities, specifically in relation to open space provision.
- The appellants refer to Sections 11.5.10, 11.5.11, DM OBJ 26 and DM OBJ 27 of the Meath County Development Plan 2021 - 2027, which relates to public open space design, and the quantitative requirement for open space.
- The appeal submission is accompanied by a map depicting 12 no. areas of open space with Blackcastle Estate, including the appeal site, which total 1.7934 ha, or 9% of the overall site.

6.2. Applicant Response

The applicant submitted a response (c/o Brendan English and Hendrik van der Kamp) in respect of the third party appeal submission, noting;

- The applicant's agent does not own the site. The appeal site is owned by the applicant and another person, who has submitted a letter of consent. This letter of consent accompanies the planning application. The appellants do not dispute the ownership of the site.
- An access road to the 'A2' (New Residential) zoned land is not an objective of the Development Plan. The 'A2' zoned land to the rear of the appeal has road frontage to the R162 and does not require access from Blackcastle Estate. However, if such a road was required, a road and footpath in excess of DMURS standards could be provided.
- The proposed house is designed with dual frontage and achieves passive supervision of adjoining spaces. The adjoining site may be used for an infill house and the design of the proposal also considers this.
- The sewer is located well behind the proposed house and does not interfere with access to the sewer. Irish Water issued a response to the applicant's pre-connection enquiry indicating that the proposal was feasible, and raised no objection in relation to sewer access.
- Whether or not the appeal site formed part of public open space in the past or under the original parent planning permission is a moot point. The appellants cannot find a site layout map for the parent planning permission and the land is not zoned as open space. The report of the Planning Officer states that the site does not appear to be zoned as open space as per the County Development Plan, and historic applications. It is not relevant to the current planning application to determine whether or not Blackcastle Estate has sufficient public open space, the site is in joint ownership of the applicant and another party and cannot be public open space. The appellants have failed to provide any evidence that the site was ever used as public open space. The report of the Planning Officer considers the site to be an underutilised, infill site, which is zoned.

- In conclusion,
 - the applicant has an adequate interest in the site to make the planning application;
 - the proposed development would not prevent the construction of a road, and the proposal incorporates an appropriate corner design should such a situation arise;
 - adequate space is provided for access to the existing foul sewer;
 - the appellants have failed to provide any evidence regarding the use of the site as open space;
 - the proposal accords with national, regional and local planning policy in respect of infill development, and the proposal is therefore in accordance with the proper planning and sustainable development of the area.

6.3. **Planning Authority Response**

A submission has been received from the Planning Authority stating that the proposed development accords with the Meath County Development Plan 2021-2027, and requests the Board to uphold the Planning Authorities decision to grant permission.

6.4. **Observations**

None received.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant national and local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Principle of Development
- Design and impact on amenity of area
- Issues Arising

- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. The appellants contend that the appeal site has been used as open space for 50 years, that the use of the site as open space is derived from the original permission for the estate, and that the applicant has not demonstrated that that the site was not part of the original scheme of open space. The first party notes that no evidence has been provided by the appellants in respect of their assertion that the site formed part of the public open space associated with the parent permission for the estate, that the land is not zoned open space, that ultimately the issue of whether the appeal site formed part of public open space in the past or under the original parent planning permission is a moot point, and that it is not relevant to the current planning application. Furthermore the first party notes that it is not relevant to determine whether or not Blackcastle Estate has sufficient public open space as the site is in joint ownership of the applicant and another party and thus cannot be public open space.
- 7.2.2. In my opinion the main issue in determining the acceptability of the proposed development on the site is the current applicable land use zoning. I note that under the Navan Development Plan 2009-2015, the appeal site was zoned 'F1' (Open Space) however in the Meath County Development Plan 2021 – 2027 the appeal site is zoned 'A1' (Existing Residential) under which 'residential' use class is permissible, and as such I consider the principle of residential use on the appeal site to be acceptable.

7.3. Design and Impact on Amenity of Area

- 7.3.1. Blackcastle Estate primarily comprises two storey semi-detached dwellings. I note that the dwelling to the north of the appeal site is detached. The proposal comprises a two storey detached dwelling which is in my opinion sympathetic to the character of the area. I do not consider that the proposed dwelling would result in any significant negative impacts on the visual amenity or character of the area. The applicant has also aligned the proposed house with the dwelling to the south (114 Blackcastle Estate) which further assists with the integration of the proposal.

7.3.2. Having regard to the scale, design and relationship of the proposal to adjoining site boundaries and neighbouring property, I am satisfied that the proposed development will not result in any significant diminution in the residential amenity of the property in the vicinity of the appeal site. Noting the residential zoning of the lands to the immediate north I recommend that the first floor windows on the north elevation serving Bedroom 3 and 4 should be omitted. These bedrooms are served by windows on the front and rear elevations and in my opinion the omission of the windows from the northern elevation will not significantly affect the amenity of these bedrooms.

7.4. **Issues Arising**

7.4.1. Road – The appellants note there is a prospect of a road through the green space and that any proposal on the site should take account of same, allowing for a road/footpath in compliance with DMURS standards, and that any dwelling on the site should be dual fronted. The first party notes that the ‘A2’ zoned lands to the rear of the appeal have road frontage to the R162 and as such it would be unlikely that access to these lands would be required from Blackcastle Estate, but if such a road was required a road and footpath in excess of DMURS standards could be provided in the area adjacent to the appeal site. I note that the Meath County Development Plan 2021-2027 does not make reference to, or include a specific objective for a road at this location. Additionally, I note that the Planning Authority have not raised the prospect of a road at the location. I therefore do not consider that a refusal of permission would be warranted on this basis, or that this issue requires to be addressed further in the context of the design and siting of the proposal.

7.4.2. Foul Sewer – The appellants raise concerns regarding the existing foul sewer which is located to the rear of/within the appeal site. I note that Irish Water (now Uisce Éireann) have expressed no specific objection to the proposed development in this regard and that the proposed development will be subject to a connection agreement where the applicant will have satisfy Uisce Éireann’s requirements. On this basis I consider the proposed development to be acceptable.

7.4.3. Encroachment on area to rear/east - The appellants’ submission refers to the proposed development encroaching on an adjacent plot of land which is zoned ‘A2’, with reference to the requirement to maintain minimum separation distances between

rear opposing first floor windows, and consequences for the building line and rear gardens of the adjacent zoned land. Regarding the issue of the encroachment of the appeal site into the 'A2' zoning, I note that on the Development Plan zoning map for Navan (Sheet No. 28 a) the interface between the 'A1' and 'A2' land use zoning at the location of the appeal site is partially obscured by a blue line indicating the extent of a Strategic Development Zone located to the rear of the appeal site. Following the rear boundary of the properties at this location, upon which the extent of the 'A1' zoning would appear to be based, I am satisfied that the appeal site as indicated on the OS map (*Drawing No. 2022-05*) is zoned 'A1'. From reviewing the site layout drawings which were submitted with the planning application I note that the rear boundary of the appeal site appears to project marginally beyond the rear site boundary of 114 Blackcastle Estate, however I note that this is common to the rear boundaries of the properties at this location and as such the extent of the zoning also indents in places. Regarding the impact of the proposal on the undeveloped 'A2' zoned lands to the rear of the site, I note that DM OBJ 18 of the Meath County Development Plan 2021-2027 requires a minimum separation distance of 22 metres between directly opposing rear windows at first floor level, however I do not consider DM OBJ 18 to be relevant in this instance noting that there is currently no dwelling situated to the rear of the appeal site. Furthermore, I note that the Development Plan provides that a relaxation of the standards set out at DM OBJ 18-21 will be assessed on a case-by-case basis. I note that the proposal has a rear garden depth of c. 8 metres, which in my opinion is adequate to protect the amenity of any future development on the adjacent lands. I am satisfied that the proposed development would not result in any significant overlooking of the adjacent 'A2' zoned lands.

7.4.4. Part V - The applicant has submitted details in relation to compliance with his obligations under Part V of the Planning and Development Act 2000, as amended. Accordingly, in the event of a grant of permission, a planning condition providing for the developer to comply with the provisions of Section 97 of Part V of the *Planning and Development Act, 2000*, as amended, is not required.

7.4.5. Title - The appeal submission states that the appellants assert prescriptive rights over the site for use as open space, and that the Board are requested to make an application to the High Court under Section 50 (1). I am satisfied that the applicant has

a sufficient legal interest in the site to make a planning application. I consider that the issue raised is a civil issue to be resolved between the applicant and appellants having regard to the provisions of Section 34 (13) of the Planning and Development Act, 2000, as amended, and as such are outside the scope of this appeal.

- 7.4.6. Fence – The appellants states that the appeal site was fenced prior to the erection of the site notice, and that this would not be exempted development as it would be contrary to Article 9 (1) (x) of the Planning and Development Regulations, 2001, which I note relates to land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes. The wire fencing which has been erected around part of the site does not form part of the proposed development and consideration of whether this fence is or is not exempt development is in my opinion therefore outside the scope of this appeal.

7.5 **Appropriate Assessment**

- 7.5.1. Having regard to the nature and limited scale of the proposed development and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the proposed development would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

8.0 **Recommendation**

Having regard to the above it is recommended that permission is granted based on the following reasons and considerations and subject to the attached conditions.

9.0 **Reasons and Considerations**

Having regard to the provisions of the Meath County Development Plan 2021-2027, the residential zoning of the site, the prevailing pattern and character of existing development in the vicinity and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would not be prejudicial to public health. The proposed

development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The windows at first floor level on the side/north elevation serving Bedroom 3 and Bedroom 4 shall be omitted. Prior to commencement of development, the applicant shall submit revised floor plans and elevations indicating this amendment to the Planning Authority for its written agreement.</p> <p>Reason: To protect the residential amenity of adjoining lands.</p>
3.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be as submitted with the application, unless otherwise agreed in writing with the Planning Authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In the interest of visual amenity.</p>
4.	<p>All boundary walls shall be rendered on both sides and suitably capped.</p> <p>Reason: In the interest of residential and visual amenity.</p>
5.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the detailed requirements of the Planning Authority for such works and services.</p>

	Reason: In the interest of public health.
6.	<p>Prior to commencement of development, the developer shall enter into water and waste water connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
7.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the Planning Authority.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>
8.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interests of visual and residential amenity.</p>
9.	<p>Proposals for numbering of the proposal shall be submitted to, and agreed in writing with the Planning Authority prior to commencement of development.</p> <p>Reason: In the interest of urban legibility.</p>
10.	<p>The developer shall pay to the Planning Authority a financial contribution 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. Details of the application of the terms of the Scheme shall be agreed between the Planning Authority and the developer or, in default of such agreement, the matter shall be</p>

	<p>referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>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.</p>
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Ian Campbell
Planning Inspector

25th June 2023