



An
Bord
Pleanála

Inspector's Report ABP315003-22

Development	Demolition of dwelling and construction of 2 apartments.
Location	Lower Main Street, dungaree, Kingscourt, County Cavan.
Planning Authority	Cavan County Council.
Planning Authority Reg. Ref.	22/289.
Applicant(s)	William Malone.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Michael Donnellan & Others.
Observer(s)	None
Date of Site Inspection	16 th May 2023
Inspector	Aisling Dineen.

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	4
4.0 Planning History.....	5
5.0 Policy and Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations	6
5.3. EIA Screening	7
6.0 The Appeal	7
6.1. Grounds of Appeal	7
6.2. Applicant Response	9
6.3. Planning Authority Response	9
6.4. Observations	10
6.5. Further Responses.....	10
7.0 Assessment.....	10
8.0 Recommendation.....	16
9.0 Reasons and Considerations.....	16
10.0 Conditions	16

1.0 Site Location and Description

- 1.1. The site is located in the town of kingscourt in the eastern part of County Cavan. The site is accessed by the R 162 regional route, which runs through the town. There are a number of residential dwellings on either side of the site. Many of the adjacent dwellings are detached, but there are small terraces also, such as the terrace of three dwellings on the adjacent site to south of the appeal site. There is generally a mix of house type in terms of scale/design and roof formation in the area.
- 1.2. There is a single storey dwelling house on the site to the north and an end house of a row of three terraced houses, on the site to the south.
- 1.3. The site contains a derelict single storey dwelling with a domestic storage shed to the rear. The site, as is typical of adjacent sites, is elongated, with a relatively long narrow rear back garden, which rises in ground levels towards the rear and west.

2.0 Proposed Development

- 2.1. It is proposed to demolish the existing derelict dwelling and rear shed structure and to construct a unit with two apartments.
- 2.2. One apartment is proposed at ground floor level with two bedrooms, storage areas and a kitchen living area to the rear, with a rear patio/private open space area.
- 2.3. The second apartment is to be located at first floor level, with a similar layout but for the stairs area and the location of the patio is to be accessed via a foot bridge to its private open space patio area, on higher ground to the west.
- 2.4. Both apartments are to be accessed via one front door and lobby area, where two separate accesses to both apartments are located.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority made a decision to grant permission subject to 13 No conditions on the 27th October 2022.

The Chief Executives decision reflects the planner's report.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planners report assessed the proposal in tandem with review of the various observations made during the public consultation period.

3.2.3. The report stated that the site is an area zoned 'Existing Residential' within the Cavan County Development Plan 2022-2028. The report considers that the site is a brownfield site and the subject property has been derelict for a number of years.

3.2.4. The assessment concluded that three items of further information be requested, generally relating to:

- Revised proposals to ensure that the development would fit more seamlessly into the area.
- Submit increased provision of on-site curtilage parking (albeit the development plan requirements had been met).
- The maps and drawings submitted have overlapping of the red line boundary from the subject site onto neighbouring sites not in control of the applicant. Material clarifying the extent of landholding and works proposed to dividing boundary walls, was requested.

3.2.5. Following a response to the above further information request, and following assessment thereof, a decision to grant planning permission was recommended, subject to conditions.

3.2.6. Other Technical Reports

Municipal District Engineer Report

The entrance to the proposed re-development exits onto the public road; R162, which is subject to a 50 km/h speed limit.

The proposal includes just 2 parking spaces for two 2-bedroom apartments.

Although the requirement of the County Development Plan is complied with, concern is raised regarding any additional parking associated with the development.

Conditions recommended in the event of a grant of planning permission.

4.0 Planning History

None.

5.0 Policy and Context

5.1. Cavan County Development Plan 2022 -2028

The site is zoned 'Existing Residential' wherein it is an objective of the Council; 'To protect and enhance the amenity of developed residential communities'.

It is a stated objective under Objective ETV 06 to 'Support the ambitious regeneration of underused town centre and brownfield/infill lands along with the delivery of existing zoned and serviced lands'.

It is a stated objective under Objective CGD 02 to: 'Focus on regeneration and development of identified key town centre infill/brownfield/back land sites promoting sustainable appropriate densities and the establishment of a mix of uses to encourage greater vibrancy outside of business hours'

Under Section 2.7 Kingscourt is identified as a Self-Sustaining Town.

Self Sustaining Towns have high levels of population grown but require targeted 'catch up' investment to become more self-sustaining.

It is a stated objective under Objective KG 04 to 'Provide for the creation of sustainable communities in Kingsourt by identifying sufficient land for new development, in particular housing, enterprise and employment, community, recreational and tourism uses'.

It is a stated objective under Objective KG 03 to ‘Encourage the appropriate redevelopment of brownfield and infill sites for residential uses within the footprint of existing built-up areas.

5.2. National/Regional Policy Context

- Project Ireland 2040 National Planning Framework (2018)
- Regional Spatial Economic Strategy 2020-2032 (RSES)
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (DECLG, 2018) and as updated (2020)
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018)
- Design Manual for Urban Roads and Streets 2019
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas.
- Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities (2007)
- The Planning System and Flood Risk Management 2009 (including the associated Technical Appendices).
- Appropriate Assessment of plans and projects; Guidelines for Planning Authorities.

5.3. Natural Heritage Designations

The site is situated c. 5.5 km east of Ballyhoe Lough – proposed NHA (Site Code 001594)

5.4. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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

- The appellants are immediate neighbours of the appeal site property.
- There is a loss of privacy as the large size and height of the proposal will be too domineering.
- The large size of the proposal which is located at the back of neighbouring properties will completely overshadow the back of the said houses.
- The size of the building is too big for the site in question.
- The proposal will stand out and it does not fit in with the rest of the neighbouring properties.
- Concerns are raised about the height of the proposal regarding overshadowing and the reduction of natural sunlight within living rooms and back bedrooms. The development will black out the side of two properties at Eircode's; A82N2C7 and A82H9P9.
- The proposed development would cause trespass and damage on some of the neighbours surrounding boundary stone walls and objection is raised regarding the walls being knocked, or built on, or overlapping into any neighbour's property.
- There is no consent given for any overlapping into the properties at A82N2C7 and A82H9P9.
- There is an old stone wall that contains and runs to the side and rear of the grouping of 3 No houses, at Eircode A82N2C7. These properties used to be

occupied by An Garda Sochána and the said stone wall wraps around all three houses. This wall also comprises the front side wall (shared boundary) with the appeal site.

- The front area of the appeal site used to be open ground and a front boundary fence was only erected in the late 1970s.
- Regarding the drawings submitted the red boundary lines are incorrectly drawn and are too far out into the property at A82N2C7.
- According to the plans submitted the applicant will be building on the footprint of the boundary wall, which is objected to.
- Diagrams are submitted demonstrating the location of the rear door and rear living room window of property A82N2C7. There will be overshadowing and a dominant impact.
- Regarding property at Eircode A82H9P9, the boundary line on the plan is not the true boundary. The boundary line of the appeal site garden appears incorrect.
- Permission must be given by neighbours to build on or remove any walls.
- The distance between the wall of Eircode A82H9P9 and that of the derelict house (on appeal site) is stated to be 1050mm, which is very narrow, in terms of emergency access.
- There would be encroachment onto the property at A82H9P9.
- The property at Eircode A82H9P9 has right of way on the path between the appeal site and the back of the property. The occupants have been using this path/right of way since the 1950s to maintain their house.
- There are no proper parking facilities and the area is very congested and danger will be caused to people walking on footpaths. Students from Colaiste Dun an Ri use the footpath daily. The entrance to the school is 40 metres from the proposed development and there is no footpath on the opposite side of the road. This is a safety issue for school children and for pedestrians.

- There is presently no room for parents to park while picking up and dropping off children to school. An additional apartment entrance would ensure an accident and this is objected to.
- There is no proper access regarding disability and Part M of the Building Regulations.
- There are no proper fire exits and fire safety plans.
- There is asbestos on the existing roof and this has not been indicated on the application form.
- There have been issues in the town with the sewer system overflowing onto neighbouring properties during heavy rain. The proposal will add more strain to the sewerage system.
- Build to rent development can be dangerous not knowing who the occupants are, especially so close to a secondary school.
- The proposal will devalue the appellants property.

6.2. Applicant Response

None.

6.3. Planning Authority Response

- Many of the issues raised under the appeal have been addressed in the Councils assessment following further information, which formed the basis of the decision to grant planning permission.
- Item 2 of the appeal relates to the proposed height and potential for overshadowing and reduction of natural daylight. Further information sought to remedy this issue. The revised elevations show a revised finished building height of 8.18 metres, which is approximately 0.95 metres lower than what was originally proposed. Additionally, the roof pitch was reduced from 40 to 38 degrees, to ensure the development would integrate more seamlessly with its surroundings.

- Given the natural path of the sun and the siting of the proposed development, there will be minimal impact on neighbouring properties.
- Relating to Item 7 of the appeal this issue should be considered under recommendations and guidance set forth in Part M of the Building Regulations 2010.
- Regarding antisocial behaviour the redevelopment of the lands would mitigate against antisocial behaviour. The dilapidated building represents an opportunity for antisocial behaviour and squatting. The proposal would reinvigorate a derelict site and add vitality to the area.
- Relating to Item 12 of the appeal relating to loss of value of neighbouring properties it is submitted that should the development take place, on the dilapidated site, it would have the opposite impact or no impact at all. The house on the appeal site has been derelict for a number of years.
- Other matters are raised under the appeal but these have been addressed already under the planner's report.
- The planning authority's decision is correct and the Board is respectfully asked to uphold it.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

- 7.1. Having examined all the application and appeal documentation on file and having regard to the relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and the planning authority's decision to grant planning permission. I am satisfied that no other

substantive issues arise. AA also needs to be considered. The main issues, therefore, are as follows:

- Principle of Development
- Design/Scale
- Residential Amenity
- Title/Ownership
- Other Issues
- Appropriate Assessment

7.2. Principle of Development

7.3. The appeal site contains a single storey derelict structure, which is positioned within a row dwelling houses. There is a row of three terraced houses to south and there are single and two storey detached houses to the north of the appeal site fronting the public road. The form and pattern of the established dwellings in the area is certainly not uniform as there is a wide variation in house type/design. The derelict structure on site appears very unsightly and significantly detracts from the sense of place of this streetscape, whereas adjacent properties are noted to be attractive well-kept dwelling units. Therefore, the redevelopment of the subject site is a welcome proposal, subject to satisfying normal planning and sustainable development provisions.

7.4. The land on which the appeal site is located has the zoning designation 'Existing Residential' wherein it is an objective of the Council, to '*To protect and enhance the amenity of developed residential communities*'. The Council has also clearly adopted a number of relevant policies regarding derelict structures and brownfield sites, which, generally support the regeneration of the appeal site. Such policy is cited above under para 5.1 above. it is considered that the principle of the proposed development is acceptable.

7.5. Design/Scale

- 7.6. The proposal introduces a mix of tenure to this area in that it comprises two apartments, on a street, which is comprised of predominantly individual detached and terraced dwelling units. Both apartments are accessed via one front door, which has an internal lobby with access to both apartments. Overall, in design terms the proposal appears as a single detached dwelling unit from the front elevation, which is satisfactory. I consider the proposed mix of tenure to be acceptable and I am also satisfied that the proposed building would assimilate well with adjacent development from the streetscape perspective.
- 7.7. The appellants submit that the proposed development is too big for the site and will have a domineering impact on the adjacent residents. I consider that the proposed development would assimilate very well with the adjoining properties from the front elevation along the streetscape. I note that there is a single storey dwelling on the site to the north of the appeal site, however I also note that there are two storey dwellings with varying roof lines/formations along the road frontage further north. There is also a terrace of three attached houses immediately to the south of the appeal site. The pattern of development in the area is not uniform. In terms of scale, I am satisfied that the proposal is in accordance with the overall scale of development in the area.
- 7.8. The applicant was requested under further information to revise the proposal in order to fit more seamlessly with the adjacent properties. As a result, the height of the roof was reduced by nearly 1 metre and the roof pitch was also reduced from 40 degrees to 38 degrees. When one reviews the revised details submitted and the contiguous elevations, it is considered that the proposal is in context, with respect to scale, with the adjoining development when viewed from the front elevation along the streetscape.
- 7.9. From the rear elevation, the proposed development would certainly be visible from both of the adjacent properties, however in a built urban space development is expected to be visible. It is not considered that the proposal would be domineering. The degree to which the proposed development would or would not impact on the residential amenities of both properties is a crucial aspect of the assessment at hand.

7.10. Residential Amenity

- 7.11. With regard to privacy and overlooking of the adjacent properties the south elevation has no windows and no balconies that are exposed to the adjacent property to the south.
- 7.12. There are windows proposed at ground floor level on the north elevation, which are detailed to be of opaque glass. Both of these windows front a blank elevation wall of the adjacent property to the north and which are separated by a narrow path.
- 7.13. There are two patio areas proposed with respect to both apartments. Apartment No 2 is connected by way of a bridge to a patio further west on the site. The bridge is proximate to the north boundary of the site. The other patio, attendant to Apartment No 1 is directly adjunct to the rear of the apartment. It would be important that any bridge walk-way connecting apartment No 2 to its rear patio garden would be screened so that there will be no possible provision for occasional overlooking of the property to the south. This can be addressed by way of condition.
- 7.14. With regard to loss of daylight/sunlight. The property to the south of the appeal site will enjoy the same morning direct sunlight levels as existed heretofore. At midday and into the afternoon and evening the property will continue to enjoy the same direct sun light levels as existed heretofore. Owing to the trajectory of the sun there will be no impacts regarding loss of direct sun light on the property to the south of the appeal site. There may be some provision for the loss of ambient daylight as a result of the proposed development, however this is not considered significant such that depreciation of the property would occur.
- 7.15. Regarding loss of daylight/sunlight associated with the property to the north of the appeal site, this property will enjoy much the same morning direct sunlight levels as existed heretofore. Given the rear building line of the established property to the north, which is roughly on par with the proposed rear building line, as per the site layout maps submitted, the private open space attendant to the property to the north will not be impacted by loss of direct sunlight. As with the property to the south, there may be some provision for the loss of ambient daylight as a result of the proposed development, however this is not considered significant such that depreciation of the property would occur.

7.16. The appellants have raised concerns regarding potential overshadowing.

Considering that Due South is positioned exactly south of the neighbouring property to the south there is no possibility of overshadowing on the property to the south. Regarding the property to the north any overshadowing of this property would be confined to the roof area of the adjacent house to the north. However, as the sun at midday is at its highest point in the sky, shadows exerted are naturally shorter. As the sun travels towards the west in the evening there is minimal opportunity for overshadowing of the property to the north, given the position of the proposed rear building line of the proposed building. I do not consider that overshadowing of properties will occur to any significant extent on the adjacent property.

7.17. Overall, owing to the trajectory of the sun's path, I do not consider that there will be any significant loss of direct sun light or overshadowing. While the proposed development will be visible from the two adjacent properties north and south of the appeal site, I do not consider that the residential amenity value of said properties will be compromised to the extent such that depreciation of properties would occur as a result. I am of the viewpoint that the north and south boundaries of the appeal site should be screened appropriately, as is indicated on the revised site layout submitted. However, further detail on a landscape plan and timescale for implementation should be conditioned, if the board is minded to grant planning permission. I also consider that the bridge connecting apartment No 2 to its patio area should be screened to the south.

7.18. Title/Ownership

7.19. There is considerable reference under the submissions to the planning authority and under appeal submission regarding the boundary line of the proposed development including an old boundary wall, and it is submitted that no consent is given to develop over it. The planning authority under its further information request Item No 3 raised the issue of an overlapping red boundary line and required clarity on the issue. In assessing the response to the further information, the planning authority deemed the documentation to be acceptable.

7.20. While I acknowledge that there may be a dispute about the shared boundary, I also note section 5.13 of the Development Management Guidelines regarding issues relating to the title of land. The guidelines are clear, the planning system is not designed as a mechanism for resolving disputes about title to land or premises or

rights over land; these are ultimately matters for resolution in the Courts. As section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development.

7.21. Other Issues

7.22. The appeal submission references overspill of towns sewer system onto the streets at certain times of heavy rainfall. I note that the area engineer who assessed the property has not indicated any problems or issues with the foul water system. I am satisfied from the details on file that there are no objections to the proposed development connecting to the public waste water system and that there is no evidence of a public health issue on the file.

7.23. The appellant has suggested that the proposed development, if permitted, would bring anti-social behaviour. There is no evidence on file to suggest that this would arise if planning permission was granted. I concur with the planning authority in that I consider, that given the appeal site has a derelict house thereon, that an active use with actual occupancy, would reasonably mitigate against any opportunities for anti-social behaviour at the location.

7.24. It is suggested under the appeal submission that if the development is granted that depreciation of adjacent property would occur. I consider that it is reasonable to assume that the regeneration of a derelict site with a disused derelict dwelling thereon, within a zoned residential area, could only add to the attractiveness of the space. There is no evidence available to me to suggest that depreciation of property would occur.

7.25. Regarding restricted parking in the area and the appellants assertion that there is no parking for parents at school drop off and pick up times, I consider that the appeal site, which is the subject of assessment, has made sufficient provision for parking, which is beyond the requirements of the development plan. I consider this to be satisfactory. The management of school parking is not within the Boards remit.

7.26. The appellant has raised concern regarding a fire certificate and disability access. The local authority is responsible for the implementation of the relevant Building Regulations and has its own processes established to preside over same.

7.27. Appropriate Assessment

- 7.28. Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that planning permission be granted for the proposed development.

9.0 Reasons and Considerations

Having regard to the land use zoning of the site in the current development plan for the area, to the nature and scale of the development, and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

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 received by the planning authority on the 23rd day of September, 2023, 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 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.

2. The proposed development shall be amended as follows:

- (a) The bridge connecting Apt No 2 to its patio space shall be screened to the south. The screen shall be 1.5 metres high and shall be opaque.
- (b) Ground floor windows on the north elevation shall be opaque.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

3. 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 within three months of the date of this order.

This scheme shall include the following:

A plan to scale of not less than [1:500] showing –

- (i) The measures, including details of species, to be put in place for the adequate screening of both the north and south boundaries.
- (ii) A timescale for implementation.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, shall be replaced within the next planting season with similar species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.

Reason: In the interest of public health.

6. Details of the materials, colours and textures of all the external finishes to the proposed apartments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

Reason: In the interest of visual amenity.

7. 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.

Reason: In order to safeguard the residential amenities of property in the vicinity.

8. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

9. 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.

Reason: In the interests of visual and residential amenity.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting the 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

referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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.

Aisling Dineen
Planning Inspector
31st May 2023