



An
Bord
Pleanála

Inspector's Report ABP-315502-23

Development	Construction of 8 residential units granted under 18/349, previous planning ref no's 16/814 & 18/349.
Location	Mount Pleasant, Co. Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	2245
Applicant	MPD Property Developments Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party v. Conditions
Appellant	MPD Property Developments Limited
Observer(s)	None
Date of Site Inspection	22 nd September 2023
Inspector	Ronan O'Connor

1.0 Site Location and Description

- 1.1. The appeal site is located c.600m south west of the town centre of Loughrea (circa 0.233 Ha) within a partially completed housing development.

2.0 Proposed Development

- 2.1. Construction of 8 residential units granted under 18/349, previous planning ref no's 16/814 & 18/349. The appeal relates to the removal of Condition 2 (Omission of a House), Condition 4 (Requirement to engage an archaeologist) and Condition No. 23 (Bond of €50,000 to secure satisfactory completion).

3.0 Planning Authority Decision

3.1. Decision

- 3.2. The planning authority decided to grant permission subject to 25 conditions [decision date 2nd December 2022]. The following conditions are the subject of this appeal:

- Condition No. 2- Omission of House Type 4 in order to provide for a minimum distance of 2m between the dwelling and side/site boundaries.
- Condition No. 4 – (a-c) – Requirement to engage an archaeologist
- Condition No. 23 – Bond of €50,000 to secure satisfactory completion.

3.3. Planning Authority Reports

Planning Reports

- 3.3.1. The following comments in the first planner's report are relevant to this appeal:

- Having regard to DM Standards, there are concerns regarding the proximity of Units 4 and 1 to the neighbouring boundary wall, and similarly for the other units within the development/recommended that one to two units are omitted to allow for bigger plots and to ensure a minimum distance of 2m between the dwellings and boundary walls.

- Noted that previous permissions relating to this site required archaeological monitoring of groundworks.
 - Concerns in relation to the unfinished nature of the existing Ard Na Gaoithe development, which has not been taken in charge/services do not appear to be completed/previous inspections by the Taking in Charge Section has highlighted a number of issues with site services/access road.
- 3.3.2. FI was requested on 15th March 2022 in relation to 8 no. specific issues, including but not limited to,;
1. Taking in charge/completion of the Ard na Gaoithe Housing Development (with reference to the most relevant permissions 07/3675 and pl. ref. 16/814)
 2. Revised plans showing the omission of one to two units in order to provide for the required 2m separation distance between dwellings and side boundaries
- 3.3.3. FI was received 7th November 2022.
- 3.3.4. The following comments within the second planner's report are of relevance to this appeal:
- Taking in charge application submitted and addressing site resolution matters
 - All underground services are complete to taking in charge standards
 - On the road wearing course on the lower section of the site has been completed
 - Roads report notes that the completion of the outstanding works is a matter of urgency
 - Schedule of works submitted and timeframe for completion submitted with the FI submission/relate to water main, kerbs/walls, roads/landscaping signage/Jan 2023 referred to as the approximate latest date for completion
 - Applicant has submitted a revised layout to provide 2m to the site boundary for 2 units/however does not address concerns.
- 3.3.5. Recommendation was to Grant permission, subject to conditions.

Other Technical Reports

- Roads – recommends conditions in relation to (1) completion of unfinished road and streetscape (2) drainage (3) bond of 56,000 to secure provision and

completion of public lighting, roads, footpaths, boundary treatments, open spaces, water mains and foul sewerage systems and other services.

3.4. **Prescribed Bodies**

- No referrals made.

3.5. **Third Party Observations**

- 3.5.1. 3 no. third party submissions were received from residents of the Ard na Gaoithe development – raise concerns in relation to the compliance with conditions attached to 16/814 namely completion of the development to taking in charge standards/setting up of a management company/occupation of houses prior to completion of the development /provision of landscaping under 16/814/overlooking.

4.0 **Planning History**

- 4.1.1. There is significant planning history on the site. Those of most relevance to this appeal are as follows:

18/349 – Grant permission consequent to outline permission (16/814) for 4 houses [decision date 25th June 2018]

16/814 – Grant permission for 11 houses, completion of site works and Grant Outline permission for 4 no. houses. [decision date 28th February 2017]

5.0 **Policy Context**

Galway County Development Plan, 2022-2028

- 5.1.1. The Development Plan was adopted by the elected members on the 9th May and came into effect on the 20th day of June 2022.

Objectives relevant to this appeal include:

- ‘ARC 5 Development Management’ All planning applications for new development, redevelopment, any ground works, refurbishment, and restoration, etc. within areas of archaeological potential or within close proximity to Recorded

Monuments or within the historic towns of County Galway will take account of the archaeological heritage of the area and the need for archaeological mitigation.

- 'DM Standard 2: Multiple Housing Schemes (Urban Areas) - Additional Standards for Residential Development Side Boundaries' - In general, it is desirable that all new houses shall have a minimum clear distance of 2 meters to the side boundaries of the site and shall not have first floor side window living room oriented in such a manner so as to cause overlooking and loss of privacy to other residential properties. Both the front and rear boundaries of each site in addition to the overall site must be suitably delineated with the use of block walls either, plastered/not plastered and capped/uncapped being the normal requirement

5.2. Natural Heritage Designations

- 5.2.1. The subject site is located 500m to the east of Lough Rea SAC and Lough Rea SPA.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal is a **1st Party Appeal v Conditions 2, 4 and 23** of Planning Permission Reg. Ref. 22/45. The main points of the grounds of appeal are as follows:

Condition No. 2 (Omission of Dwelling)

- Revised Site Layout Plan submitted at FI Stage/minimum distance of 2m has been achieved between dwelling houses and the site boundaries.
- Layout is in compliance with DM Standard 2
- Omission of a unit would impact on the overall density of development provided/goes against current Development Plan and National Planning Guidelines (in relation to housing provision)

Condition No. 4 a-c (Engaging the services of an archaeologist)

- An archaeologist is not required for this proposed development
- Site was cleared and services constructed under parent permission 03/7244 and 07/3675/all civil works were substantially completed/6 houses were constructed

before 2008/under these permissions there was no condition for an archaeologist to monitor the works

- Existing ground levels has been altered/site is currently used a site compound/no archaeology will remain/no registered monument within the site

Condition No. 23 (Bond of €50,000)

- Under parent permission 16/814 a bond was requested for €98,000/this cash bond was complied with/a taking in charge application has been made to Galway Co. Co. under ref no. TIC 22/009, as all works are nearing completion on the development
- Proposed for the council to hold the €98,000 under all required works are completed under this parent permission 22/45 for 8 units/development will not be formally taken in charge until this permission and conditions set out are complied with.

6.2. Planning Authority Response

6.2.1. The Planning Authority provided a response to the appeal [received 10th March 2023] which is summarised below:

- Confirmed by the Taking in Charge Section that there is an application to have the estate built under 16/814 taken in charge/however the value of the remedial works far exceeds the deposit of €98,000 in place.
- Imperative that a bond is paid for any extension to the development so that in the event that the Council has to call in the bond and complete the estate that, there will be adequate funds in place.

6.3. Observations

- None received.

7.0 Assessment

7.1. I propose to assess the appeal under the following headings:

- Condition No. 2 (Omission of Dwelling)

- Condition No. 4 (Engaging the services of an archaeologist)
- Condition No. 23 (Bond of €50,000)

7.2. Condition No. 2 (Omission of Dwelling)

- 7.2.1. DM Standard 2: Multiple Housing Schemes (Urban Areas) - Additional Standards for Residential Development Side Boundaries of the Galway County Development Plan 2022-2028 states that, in general, it is desirable that all new houses shall have a minimum clear distance of 2 meters to the side boundaries of the site. It would appear that the Planning Authority felt that this had not been complied with and subsequently required the omission of one of the proposed dwelling houses, so as to ensure compliance with same.
- 7.2.2. The applicants have stated that the drawings as submitted at FI stage show that the above standard has, in fact, been complied with, and there is no need to omit a dwelling house from the proposed development.
- 7.2.3. The Planning Authority has not responded to this particular issue within their response to the appeal. However, the second Planner's report, in the assessment of the FI submission, notes that the applicant had submitted a revised layout to provide 2m to the site boundary for 2 units. However, the revised drawing does not appear to have addressed the concerns of the Planner. It is not clarified as to why the concerns had not been addressed however.
- 7.2.4. In relation to this issue, I note that there is some inconsistencies in the drawing as submitted to the PA under FI. For example, with reference to Dwgs. No. MPD22-PL-101 to 104 P2, the distance to the side boundaries is approximately 1.5m, rather than 2m as required by DM Standard 2. This is also the case on the drawings submitted by the applicant at appeal stage (received 06/01/23). However, with reference to Dwg. No. MPD22-PL-105, the distance is 2m to the side boundaries, in compliance with the standard. I am of the view that, rather than seek the omission of a dwelling in this instance, which would result in the remaining plots being over-scaled, and a loss of a housing unit in a time of housing need, a preferable solution is to amend Condition No. 2, to request a revised suite of drawings that are consistent and demonstrate a 2m distance to the side boundaries. Therefore, I recommend that Condition No. 2 is amended as per the above discussion.

7.3. Condition No. 4 (Engaging the services of an archaeologist)

- 7.3.1. The first Planner's report notes that previous permissions relating to this site required archaeological monitoring of groundworks, and a condition requiring same was subsequently imposed.
- 7.3.2. The applicants state that the site has previously been cleared and services constructed, under parent permission 03/7244 and 07/367. It is further noted that 6 no. houses were constructed before 2008 and that, under these permissions, there was no condition for an archaeologist to monitor the works. It is further stated that the existing ground levels have been altered, that the site is currently used a site compound and no archaeology will remain, and that there is no registered monument within the site.
- 7.3.3. The Planning Authority has not responded to this particular issue within their response to the appeal, although the first Planner's report notes that that previous permissions relating to this site required archaeological monitoring of groundworks. There is no further justification within the report for the imposition of this particular condition. I have reviewed all of the planning reports pertaining to the previous permissions relating to this specific site here (18/349 & 16/814) and there is no explicit discussion of the archaeological potential of this particular site, although reference is made with the Planners report in relation to 16/814, to the recorded monuments in the wider area, and comments of the Department of Arts, Heritage & the Gaeltacht in relation to a previous application on the wider site (15/1577) which required archaeological monitoring in the event of a planning permission.
- 7.3.4. I note the provisions of Objective Arc 5 of the Galway Development Plan 2022-2028, as referred to in Section 5 above. In relation to same, Loughrea is referred to as an Historic Town in Section 12.6.5, and is also listed as a 'fortified town' (or Walled Town). The site lies within the development boundary of Loughrea. As such, there is a requirement for some consideration of the archaeological potential of the site. In relation to same, while there are some recorded monuments in proximity to the subject site¹ (the closest of which is 200m north-west of the site), there are none on the site itself, or within the wider development site (on which the remainder of the

¹ GA105-67 (Tennis Court); GA105-169 (House 18th/19th Century) and GA105-168 (Burial Ground) with reference to <https://www.archaeology.ie/archaeological-survey-ireland/historic-environment-viewer-application>

estate has been constructed). I would note also that the site area is a relatively small portion of the wider site, upon which substantial development has taken place. The wider site has either been built upon or landscaped. While it is not clear from the application documents that this particular site has been subjected to extensive groundworks, from a site visit it was obvious that there some areas of hardstanding, or compacted earth, with immature scrub planting growing on the site, and as such it is clear that there has been some level of disturbance on the site. With reference to the assertions of the applicants in their grounds of appeal, it is not as clear that the construction of water/waste service infrastructure has impacted on ground conditions within the subject site, and it would appear that services are proposed running under the main access road to the immediate north-west of the subject site (with reference to 'Sewer Layout' Dwg. No. MPD22-PL-103 P2 received by the PA at FI stage). However, boundary walls and pedestrian infrastructure have been constructed in close proximity to the subject site, and would have involved some ground disturbance on the site.

- 7.3.5. Given the above considerations, I am of the view that the requirement to engage the services of an archaeologist to oversee groundworks is an overly onerous requirement in this instance, and I recommend that the relevant condition be removed.

7.4. Condition No. 23 (Bond of €50,000)

- 7.4.1. The applicant seeks to remove the requirement to lodge a security bond of €50,000 to the Planning Authority to ensure satisfactory completion of the development, and has argued that the bond of €98,000 as required by the previous permission (PA Reg Ref 16/814) is sufficient.
- 7.4.2. The Planning Authority, in their response to the appeal, have confirmed that there is a current application to have the estate built under 16/814 'Taken in Charge' but also note that that the value of the remedial works far exceeds the deposit of €98,000 in place. As such, it is the Council's view that it is imperative that a bond is paid for any extension to the development so that in the event that the Council has to call in the bond and complete the estate that, there will be adequate funds in place.
- 7.4.3. In relation to this issue, I am of the view that the principle of what the applicant is requesting is not acceptable, as the two bonds relate to separate permissions and to

two separate developments (notwithstanding they form part of the wider estate and are referred to Phase 1 and Phase 2). The appropriate procedure in this instance is to complete the initial development (PA Reg Ref 16/814 or Phase 1) to the satisfaction of the Planning Authority (i.e. to taking in charge standards), and to have the €98,000 bond returned, as appropriate, and to lodge the required bond relating to this permission (€50,000), and to complete same to the satisfaction of the Planning Authority. Should neither development be completed as per above, the Planning Authority then has funds in place to help complete same (the public realm elements at least). As such, I do not accept the applicant's contention that the requirement to pay the bond should be removed and I recommend that Condition No. 23 is retained.

8.0 Recommendation

Having regard to the nature of the conditions that are the subject of the appeal, I am satisfied that the determination by the Board, of the relevant application as if it had been made to it in the first instance, with attachment of said conditions, would not be warranted and based on the reasons and considerations set out below, I recommend that the Board direct the Planning Authority under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended, to:

1. **Amend** Condition 2 to read 'Prior to commencement of development, the developer shall submit a full set of revised drawing to the Planning Authority, for its written agreement, demonstrating that the distance from House Type 1, and House Type 4, to the side/site boundaries, is a minimum of 2m.

Reason: In the interest of mainlining a satisfactory standard of residential development

2. **REMOVE** Condition 4
3. **RETAIN** Condition 23

9.0 Reasons and Considerations

Having regard to:

(1) Planning policies and objectives under the Galway County Development Plan 2022-2028,

(2) DM Standard 2: Multiple Housing Schemes (Urban Areas) Additional Standards for Residential Development Side Boundaries' of Volume 1 of the Galway County Development Plan 2022-2028 (when considering the merits of Condition 2),

(3) the size and the disturbed nature of the site, and the subsequent unlikelihood of archaeological material of significance remaining *in situ* (when considering the merits of Condition 4), and

(5) the need to ensure satisfactory completion of the development (when considering the merits of Condition 23)

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.

Rónán O'Connor
Senior Planning Inspector

29th September 2023