



An
Bord
Pleanála

Inspector's Report ABP-315992-23

Development	Construction of two houses and associated site works.
Location	Granite Court, Fenagh, Co. Carlow
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	2260003
Applicant(s)	Ballyshancarragh Properties Limited.
Type of Application	Permission.
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Ballyschancarragh Properties Limited.
Observer(s)	Tadhg O'Shea and Celine Reilly Agnes and Barry Figgs Una and Fintan Kelly Sean Mahon
Date of Site Inspection	14 th March 2024
Inspector	Peter Nelson

1.0 Site Location and Description

- 1.1. The site is located within a residential development named Granite Court, in Fenagh, County Carlow. The site is located to the southwest of Fenagh Church. Fields surround Granite Court, and a detached two-storey dwelling is directly to the north. The front of the site has granite boundary walls.
- 1.2. The site outlined in red includes the access road to Granite Courte, its open space, a terrace of three dwellings to the front of the site and an undeveloped area where it is proposed to erect the two semi-detached dwellings. The site has a stated area of 0.39 hectares. Granite Court currently contains 17 two-storey dwellings and is accessed by the R724 road.

2.0 Proposed Development

- 2.1. Planning permission is sought to erect 2-semi-detached dwellings in an existing development. The proposed development also includes the connection to the existing public foul sewer, stormwater sewer and water main, and all associated ancillary site works.

3.0 Planning Authority Decision

3.1. Decision

The Carlow County Council issued a decision to refuse on 16th February 2023 for the following reasons:

1. The proposed development of two additional houses on lands designated as open space and car parking under the terms of Planning Ref; 17/132 would materially contravene the requirements of Condition no. 1 regarding the layout of the development and Condition no. 13, which required that 'All public open spaces shall be development for and devoted to public use'. The proposed development, if permitted would therefore constitute a substandard form of development, would contravene the terms and conditions of Planning Ref

17/132 and would be contrary to the proper planning and sustainable development of the area.

2. Policy OS. P8 of the Carlow County Development Plan 2022-2028 states that the Council will prohibit the development of areas zoned open space/amenity or areas which have been indicated in a previous planning application as being open space. The proposed development of two houses is located on land designated as open space in Planning Ref; 17/132. The removal of this open space would result in the undesirable loss of open space within the overall development of Granite Court, would impact negatively on the public amenities and character of the estate and would materially contravene Policy OS. P8 of the County Development Plan 2022-2028.
3. Insufficient information has been provided regarding surface water attenuation and surface water treatment to enable the Planning Authority to adequately assess the impacts of the development proposed. Accordingly, in the absence of same it is considered that the proposed development if permitted would give rise to a potential risk to groundwater quality and to public health and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main issues raised in the Planning Report dated the 14th February 2023 can be summarised as follows:

- The proposed development would be contrary to Policy OS. P9 of the County Development Plan which states that the Council will prohibit the development of areas zoned open space/amenity areas or areas which have been indicated in a previous planning application as being open space.
- The proposal would materially contravene a previous planning permission on which the site was designated as public open space.

- The proposal would result in the loss of three car parking spaces which were also granted in the previous permission.
- Piecemeal and haphazard development is not looked on favourably by the Planning Authority.
- The proposed removal of the open space will impact negatively on the character of the existing development and the residential amenity of its residents.
- There was no evidence that the stormwater drain permitted under the previous application outside dwelling No. 11-15 has been installed.
- It is unclear from the information submitted if surface water on site can be effectively managed and treated to prevent environmental issues.

3.2.2. Other Technical Reports

Municipal District Engineer

Report dated the 13th February 2023 has no objection to the proposed development subject to conditions.

Environment

Report dated the 13th February 2023 has no objection to the proposed development subject to conditions.

Water Services.

Report dated the 23rd December 2022 has no objection to the proposed development subject to a condition.

3.3. Prescribed Bodies

The report dated the 16th December 2022 from Uisce Eireann has no objection in principle; however, it requires the applicant to apply to Irish Water New Connection to obtain a connection agreement.

3.4. Third Party Observations

Four observations were received. The main points raised can be summarised as follows:

- The higher density does not align with the original planning application for Granite Court.
- Proposed development would result in the loss of a substantial common green area and a loss of an extra car parking space needed for residents and visitors.
- Issues with construction traffic.
- Concerned that further planning permission should be granted when there is already an unfinished estate in Fenagh.
- There is already a lack of amenities in the village, with no common area with a playground or park/recreation area.
- Issues with the unfinished nature of the existing estate.
- The proposed houses will block sunlight.
- Parking is already an issue.
- The view of the line of trees to the rear of Granite Court should be retained.

4.0 Planning History

P.A. Ref: 21/289

Permission was granted on the 10th September 2021 for the revisions to the previous grant of planning permission granted on foot of planning reference 17/132; the revisions related to House Numbers 1, 2 & 3 include (a) revised finished floor levels (b) revised dwelling orientation (c) revised elevations with the omission of chimneys.

P.A. Ref: 17/132

Permission was granted on the 3rd of October 2017 for the construction of 3 no. two-storey terraced dwellings, 6 no. two-storey semi-detached dwellings, the

connection to the local water main, public foul, stormwater sewers, and all associated site development works.

P.A. Ref: 07/1085

Permission was refused on the 8th January 2008 for revisions to the previous grant of planning permission for 17 no dwellings at Fenagh Co Carlow (Reference No PL 05/189). The proposed revision consists of the addition of 1 no. two-storey terraced dwelling to previously granted terraced block and for the relocation and redesign of houses no.11 to 17, including all associated site works.

The two reasons for refusal related to the proposed development contravene materially condition no.4 of planning permission no.4 of plan ref: 05/189, and the deficiency of private open space with a private garden proposed pf less than 10m.

P.A. Ref: 05/189

Permission was granted on the 28th of June 2006 for 9 no. two-storey terraced houses and 8 no. two-storey semi-detached houses with new site entrances, all associated site development works, services, and all related ancillary works.

5.0 Policy Context

5.1. Development Plan

The Carlow County Development Plan 2022-2028 is the operation plan for the area. This plan came into effect on the 4th July 2022.

Fenagh is designated as a Larger Serviced Rural Village.

The Housing Target for the period of the plan for Fennagh is 25 dwellings.

Policies:

CSP.12: Promote Serviced Villages as an attractive housing option for rural areas of the county through the promotion of quality of life, placemaking, and sufficient local service and infrastructure provision.

- OS. P3** Require the provision of good quality, well located and functional open space in new residential developments to cater for all age groups.
- OS. P8** Prohibit the development of areas zoned open space/amenity or areas which have been indicated in a previous planning application as being open space.

Fennagh – Policies

- FN.P1:** Consolidate the village form and built fabric within the existing village core and expansion area to include a village green located along the banks of the river, that would maximise the existing services and historic investment in the village while creating a sustainable mixed-use village environment. The village expansion area shall be subject to a detailed site brief which will address mix of uses overlooking a village green associated with the River and integration with adjoining uses.
- FN.P7:** Encourage infill development within the village development boundaries, located in proximity to services thus creating sustainable developments.
- FN.P8:** Seek the completion of the River Court (10 no. units) and Granite Court (8 no. units) unfinished housing estates with an enhanced access and environment for existing residents (road, footpath maintenance, lighting etc.)

5.2. **Section 28 Ministerial Guidelines**

Sustainable Residential Development and Compact Settlement Guidelines for Planning Authority (2024)

Metropolitan Area – Village (<1,500 population)

Metropolitan Villages are small in scale with limited infrastructure and services provision. These settlements are identified for incremental growth that takes account of the capacity of existing services and infrastructure (including public transport and water services infrastructure). Density should be tailored to reflect existing density and / or built form but should not generally not fall below 25.

Quality Housing Sustainable Communities- Design Guidelines, (2007)

5.3. Natural Heritage Designations

River Barrow and River Nore: Special Area of Conservation – 7.5km from the site.

Slaney River Valley: Special Area of Conservation – 9.5km from the site.

5.4. EIA Screening

Having regard to the nature and modest scale of the proposed development, its location in an existing village and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

See form 1 and 2 in the Appendix.

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the first-party appeal can be summarised as follows:

- The site is zoned 'Village Core' in the Carlow County Development Plan 2022-2028 and housing development is permitted in principle.
- The changes proposed were clearly intended to be material amendments to what had been permitted.
- It is unclear if the open space and parking were intended to be provided under permission PL05/189 on that part of the application site.
- The granting of the revised layout of 1-3 under planning application PL21/289 was a material departure from the layout permitted under planning application PL17/132 yet it was deemed acceptable to grant permission.
- The layout and design of the open space has not changed since PL05/189.
- The open space accounts for 17% of the total site area and is directly overlooked by most of the existing houses and by the proposed houses.

- The green area shown on the layout permitted under PL17/132 and P21/289 is irregular in shape, less than 10m in width over half its area and would be of limited amenity value to residents.
- The green area in question and car park and the adjoining car park has the potential to encourage anti-social behaviour.
- The proposed development is consistent with the zoning objective which encourages the appropriate reuse of underutilised lands.
- The part of Policy OS.P8 which seeks to prohibit the development of the areas zoned open space/amenity or areas that have been indicated in a previous planning application as being open space is ultra vires.
- The loss of the 3 additional parking spaces will not erode the level of parking below the Development Plan requirements.
- An additional visitor space could be provided in front of house 1-3.
- The proposed development is neither piecemeal nor haphazard.
- The development utilises valuable zoned land within the settlement boundary.
- The Environmental Section of the Council recommended a grant of permission subject to a standard condition regarding surface water attenuation.
- It is proposed that the dwellings be sold to Co-Operative Housing Ireland, as with houses 1-3.
- The proposed houses can assist in easing pressure on the housing list.

6.2. Planning Authority Response

The main points of the Planning Authority's response can be summarised as follows:

- The proposed development would be contrary to Policy OS. P8.
- The application did not accurately describe the proposed revisions to the previous grants of permission in the public notices and, as such, were considered a material contravention.

- The works proposed under PL ref: 21/189 were considered appropriate as they would not impact existing residential amenities, including adequate provision of open space.
- The issue of surface water was flagged in the main body of the planner's report under 'Other.'
- Notwithstanding the appeal's content, the Planning Authority's position remains as per the Planner's report recommendations.

6.3. Observations

Four observations have been received on this appeal.

The main points raised in the observation from Tadhg O'Shea and Celine Reilly can be summarised as follows:

- The removal of the section of open space would be in contravention of the development plan.
- The area was designated as open space in the previous planning application: PL21/289.
- The residents have maintained the space as a public open space.
- The density of greenspace versus built environment was established with the application and approval, and subsequent applications to add to the estate on this parcel were denied on this basis.
- There is no stormwater drain outside the new houses, which has led to surface water collecting on the road outside the new homes.
- More tarmacked driveways will contribute to this problem.
- Parking is a problem in the estate.
- The construction compound will negatively impact the parking situation.

The observations from Agnes and Barry Figg can be summarised as follows:

- The community has been using the existing open space as a communal garden.
- Applications were previously refused based on the density of green space to built-up space.
- The area has been designated as green space on previous planning applications.
- There is an existing issue with parking, which will only worsen if permission is granted.
- Surface water run-off has increased outside the newly built houses. A stormwater drain was not built as per the application's last site layout.
- A construction compound will occupy more green space.
- The proposed dwellings will reduce the light to the observer's house.
- There is an unfinished estate in Riverfield Court, which would add to the housing stock in the area.

The observations from Una and Fintan Kelly can be summarised as follows:

- The higher density is not in alignment with the original planning application.
- Planning for one additional house between nos.10 -16 was rejected in 2017.
- The proposed development would result in the loss of a substantial common green area, and the remaining open area would be insufficient to meet the needs of all the residents.
- Loss of car parking
- Construction traffic will create traffic risk.
- Lack of amenities in the village.
- Granting of permission will increase pressure on the existing amenities.
- Loss of residential amenity due to construction.
- Surface water issues.

The observations from Sean Mahon can be summarised as follows:

- Traffic is a significant issue and creates safety issues for children.
- The proposed dwellings will result in the loss of a substantial common green area and a valuable piece of social and recreational infrastructure.
- Fenagh has no common area with a playground or park/recreation area where people can meet and connect.
- The tree-lined view when you enter Granite Court should be protected as it is in keeping with the development, which aims to maintain “the woodland character of the area.
- There has been an increase in traffic volume in the estate, which will increase further if permission is granted.
- It is time to draw a line under Granite Court and consider it finished.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report/s of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Conditions of Previous Permissions.
- Public Open Space
- Surface Water Attenuation
- Parking
- Residential Amenity

7.2. Conditions of Previous Permissions

- 7.2.1. The first reason for refusal stated that the proposed development would be contrary to Planning Ref; 17/132 as it would materially contravene the requirements of Condition no. 1 regarding the layout of the development and Condition no. 13, which required that 'All public open spaces shall be developed for and devoted to public use'.
- 7.2.2. An application can be legitimately made for development which is contrary to a condition of a previous permission, and therefore, I shall assess the proposed development on its own merits.

7.3. Public Open Space

- 7.3.1. The second reason for refusal states that the removal of this open space would result in the undesirable loss of open space within the overall development of Granite Court, would impact negatively on the public amenities and character of the estate and would materially contravene Policy OS. P8 of the County Development Plan 2022-2028.
- 7.3.2. Permission was originally granted for Granite Court under planning permission file ref: 05/189. Through a request for clarification, the layout was altered to include a road that could become part of a future access road to lands in the east. This section of the road was to replace the proposed open space. The applicant states that 9 houses were built under this permission before the permission expired in 2011.
- 7.3.3. Planning permission ref: 17/132 allowed for an alteration to the original layout, which resulted in two terraced dwellings and a terrace of three dwellings to the southeast of the site. It also included a small open space area and three car parking spaces.
- 7.3.4. Maintaining an access road was not a requirement of any of the conditions attached to the permission. I note that in the current Carlow Development Plan, the land to the east of the site is outside the village boundary and is not zoned.
- 7.3.5. The overall site for Granite Court is 0.78 hectares. The applicant states that the central area of open space has an area of 1440m². This would represent 17% of the total site area.
- 7.3.6. Section 15.8.7 of the Carlow County Development Plan 2022-2028 requires that all applications for residential development shall provide public open space on greenfield sites equal to a minimum of 15% of the total site area. I consider the

overall development, if the two proposed dwellings were constructed, would have adequate public open space.

- 7.3.7. Policy OS. P8 of the Carlow County Development Plan prohibits the development of areas zoned open space/amenity or areas which have been indicated in a previous planning application as being open space.
- 7.3.8. The site of the proposed 2no. semi-detached dwellings includes an area indicated in the proposed development granted permission under planning permission ref: 17/132 as being open space.
- 7.3.9. While I acknowledge that if permission were granted, the overall development would have adequate public open space, the proposed development of two houses would be on an area of land previously indicated as open amenity space and, therefore, would be contrary to Policy OS. P8 of the Carlow County Development Plan.

7.4. Surface Water Attenuation

- 7.4.1. The third reason for refusal states that insufficient information has been provided regarding surface water attenuation and surface water treatment to enable the Planning Authority to adequately assess the impacts of the development proposed.
- 7.4.2. The proposed site plan (Dwg. No.J753-PL03-001) details the proposal for dealing with surface water.
- 7.4.3. The Executive Engineer (Environment) report dated the 27th January 2023 states that the proposed development is serviced by public water, foul and surface water and recommends a grant of permission subject to condition.
- 7.4.4. The report from the Municipal District Engineer dated the 13th February 2023 states that the stormwater is to be disposed of via an attenuation tank into the adjacent stream, all of which are in place. The Engineer recommends a grant of permission subject to conditions.
- 7.4.5. I am satisfied that subject to the attachment and compliance with the conditions recommended by the Municipal District Engineer, the proposed development would not give rise to a potential risk to groundwater quality and to public health.

7.5. Parking

- 7.5.1. The appeal observations raise concerns about the proposed loss of three car parking spaces and its impact on the current car parking issue which may lead to potential traffic hazards. At present, there are two car parking spaces for each dwelling. Two car parking spaces are provided for each of the proposed dwellings. Currently, there are also four visitor car parking spaces in front of house no.16.
- 7.5.2. The maximum car parking standard, as contained in Table 16 of Chapter 16 of the Carlow County Council Development Plan 2022-2028 for a dwelling house, is 2 per unit. In Specific Planning Policy 3 – Car Parking, of the Sustainable Residential Development and Compact Settlements: Guidelines for Planning Authorities, the maximum rate of car parking for residential development for peripheral locations, such as the application site, shall be 2no. spaces. As the existing and proposed development complies with these standards, I consider that if permission were granted, adequate car parking would serve this development.

7.6. Residential Amenity

One of the observers who lives in No.16 contends that the development of the proposed dwellings would drastically reduce the amount of natural light entering their dwelling. Given the orientation of the proposed dwellings, with the side gable of proposed house no.18 to the southeast of the gable of No.16, I do not consider that there will be significant overshadowing of No.16.

8.0 Recommendation

- 8.1. I recommend that permission be refused for the following reason:

9.0 Reasons and Considerations

Policy OS. P8 of the Carlow County Development Plan 2022-2028 states that the Council will prohibit the development of areas zoned open space/amenity or areas which have been indicated in a previous planning application as being open space.

The proposed development of two houses is located on land designated as open space in Planning Permission Ref; 17/132. The removal of this open space would result in the undesirable loss of open space within the overall development of Granite Court, would impact negatively on the public amenities and character of the estate and would materially contravene Policy OS. P8 of the County Development Plan 2022-2028. The proposed development would, therefore, 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.

Peter Nelson
Planning Inspector

10th May 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	315992-23			
Proposed Development Summary	Construction of two houses and associated site works			
Development Address	Granite Court, Fenagh, Co. Carlow			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X	
		No		
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes			EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes		Class 10 Infrastructure projects (b) (i) more than 500 dwelling units		Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	315992-23	
Proposed Development Summary	Construction of Two Houses and Associated Site Works	
Development Address	Granite Court, Fenagh, Co. Carlow.	
The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment? Will the development result in the production of any significant waste, emissions or pollutants?	The proposed development of two houses in an existing housing development is not exceptional in the context of the existing environment. The proposed development of two houses in an existing housing development will not result in the production of any significant waste, emissions or pollutants.	No No
Size of the Development Is the size of the proposed development exceptional in the context of the existing environment? Are there significant cumulative considerations having regard to other existing	The proposed development of two houses in an existing housing development of 17 dwellings is not exceptional in the context of the existing environment. There are no significant cumulative considerations having regard to other existing and/or permitted projects in the area.	No No

and/or permitted projects?		
Location of the Development Is the proposed development located on, in, adjoining, or does it have the potential to significantly impact an ecologically sensitive site or location? Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	There are no ecologically sensitive site adjoining the site. The proposed development does not have the potential to significantly affect other significant environmental sensitivities in the area.	No No
Conclusion		
There is no real likelihood of significant effects on the environment. EIA is not required.		

Inspector: _____

Date: _____

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)