



An
Bord
Pleanála

Inspector's Report ABP-319017-24

Development	Construction of 10 houses and all associated site works.
Location	Páirc Feá, Park Road, Ballinamore, Co. Leitrim
Planning Authority	Leitrim County Council
Planning Authority Reg. Ref.	2369
Applicant(s)	Frank Maxwell.
Type of Application	Permission.
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Francis McTague.
Observer(s)	None.
Date of Site Inspection	14 th of August 2024.
Inspector	Stephanie Farrington

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1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.298 ha, is located to the north of Ballinamore town centre along the R202. The R202 forms the western boundary of the site and the access road to the adjoining Páirc Feá residential estate is located to the southwest. Ballinamore Community School is located to the northeast.
- 1.2. The site is primarily overgrown undeveloped. There is evidence of previous groundworks being undertaken on site. A gated access is provided to the site from the R202. The site is elevated from the roadside boundary. An existing public footpath is provided along the R202 in the vicinity of the site. The site forms part of a larger site upon which permission was granted for 37 no. houses under PA Ref: 03/1388. 32 of the permitted 37 houses were completed under this permission. The remaining 5 no. houses were permitted on the appeal site.

2.0 Proposed Development

- 2.1. The proposed development, as described within the public notices, related to the construction of 10 no. 4 bed semi-detached residential units on the site. Revisions were made to the proposal in response to Leitrim County Council's request for further information. Key revisions included the reduction in the no. of residential units from 10 to 7.
- 2.2. The following provides a summary of the key development statistics as revised in response to LCC's FI request.

Table 1: Key Development Statistics	
Site Area	0.298ha
No. of Units	7 no. houses
Unit type	7 no. houses
Unit mix	<ul style="list-style-type: none">• 1 x 3no, bed detached (House Type A)• 4 x 4 bed semi-detached (House Type B)• 2 x 3 bed semi-detached (House Type C)
Unit Floor Areas	House Type A – 104 sq.m. House Type B- 132 sq.m.

	House Type C – 104 sq.m.
Density	7 units on 0.298ha site = 23 units per hectare (gross)
Height	9.399m
Car Parking	2 no. in curtilage spaces per unit

2.3. Access to the development is proposed via the existing access to the Páirc Feá residential estate. The proposal seeks to connect to the existing water supply infrastructure along the estate road.

2.4. The application was accompanied by the following documentation:

- Application Cover Letter
- Part V Compliance
- Appropriate Assessment Screening Report
- Completed Planning Application Form
- Public Notices
- Application Drawing

2.5. The following documentation was submitted in conjunction with the applicant's FI response:

- FI Response Letter
- Revised Application Drawings

2.6. The applicant submitted a revised boundary treatment and landscaping layout plan as clarification of further information.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Leitrim County Council issued a notification of decision to grant permission for the proposed development in accordance with the following reasons and considerations:

“Having regard to the location of the proposed development on zoned lands in the town of Ballinamore and its proximity to the services and amenities of the town and

the planning history on the site, it is considered that the proposed development, subject to compliance with the conditions set out in the Second Schedule, would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area”.

3.1.2. The decision of the Council was subject to 21 no. conditions. The following conditions attached to the decision are of note:

- Condition no. 2: relates to the submission of a revised site layout for the agreement of the planning authority with revised boundary treatment and the provision of EV charging points.
- Condition no. 3 relates to specifications for street lighting.

3.2. Planning Authority Reports

Planning Reports

Initial Planner's Report (11/07/2023)

3.2.1. The initial planner's report recommended a request for further information. The following provides a summary of the key points raised:

- The PA's Appropriate Assessment refers to the Screening Report submitted in support of the application. The report refers to the Cuilcagh-Anierin Uplands SAC located 8km from the appeal site it is stated that there is no evident link to the site. The PA is satisfied that the project does not require to be progressed to Stage II Appropriate Assessment.
- The site is identified as a brownfield site having regard to groundworks previously carried out. The principle of the development is deemed acceptable having regard to the planning history, site location and zoning objectives. The development would be deemed in accordance with CS OBJ 1 and BNE 1 of the Leitrim County Development Plan.
- The report raises concern in relation to the density of the development (40 units per ha) which is significantly over, and above density standards set out within Table 2.6 of the LCDP. The proposal for 10 units is considered to be an

overdevelopment of the restricted site. Revised proposals are recommended for a reduced scale of development.

- The report raises concern in relation to the height of the proposed dwellings which is deemed to be dominant, and the design approach is deemed to lack variety. Revised proposals are recommended.
- The report outlines that all of the dwellings are 4 bed units, and a greater dwelling mix is recommended in accordance with the guidance set out within Section 13.10.02 of the LCDP.
- Site coverage at 23% is within the recommended maximum site coverage of 50% for residential developments.
- The plot ratio of 0.54 is deemed acceptable for a Suburban/Edge of town centre site.
- The semi-detached units to the south of the application site are deemed to have insufficient separation distance between above ground floor level windows. A revised layout providing minimum separation distance of 22m between units in accordance with Section 13.9.4 of the LCDP is requested. The report furthermore outlines that separation distance of 1m between units falls short of the minimum requirement of 2 to 2.5 (Section 13.10.3) and revised proposals for bin storage are requested
- The report refers to the shortfalls in private open space serving the units. Revised proposals are recommended in accordance with Section 13.10.5 of the LCDP.
- The report outlines that levels across the site are unclear. Cross sections are requested.
- A revised site layout plan is recommended which accurately reflects the area in the vicinity of the site.
- The report refers to the proposed access to the site via a private estate road and clarifies that the road has not been taken in charge by LCC. The report requests details of consent from the relevant landowner for the proposed access arrangements.

- Further details in relation to construction stage traffic management, streetlighting, SUDS, landscaping and boundary treatment are also recommended.
- The report recommends a detailed request for further information.

Planner's Report on Further Information (16/01/2024)

3.2.2. The planner's report provides a summary and assessment of the applicant's response to the request for further information. The applicant's FI response is deemed acceptable.

3.2.3. The report recommends a grant of permission subject to conditions. The following provides a summary of the key points raised:

- The proposed no. of units on site has been reduced from 10 to 7. The revised density is deemed appropriate.
- The revised unit mix of 3 and 4 bed units and 1 detached and 6 semi-detached units is deemed acceptable.
- The revised plot ratio, separation distances, private open space provision and bin storage proposals are deemed acceptable.
- The planner's report outlines the following in respect of ownership/wayleaves:
"The issue of ownership/wayleaves arose on the basis of the information originally submitted with the application – specifically the extent of the area as outlined in blue on the submitted site location map. The applicant's agent has stated that the applicant is the owner of the entire site and also of the road onto which the development is accessing. Details from the land registry have been submitted showing that the owner is Aviance Commercial Limited which is stated as being the applicant's company and it is noted that the applicant is a director of Aviance Commercial Limited."

Notwithstanding the above, it would be prudent to advise the applicant, by way of advice note, that Section 34(13) of the Planning and Development Planning Act 2000 (as amended) states 'A person shall not be entitled solely by reason of a permission under this section to carry out any development.'

- The planner's report concludes that: *"The proposed development is located on lands zoned New Residential and within the development envelope of the town of Ballinamore and in close proximity to the services and facilities that the town of Ballinamore provides. Having regard to the above, I am satisfied that the proposed development substantially satisfies the various sections, policies and objectives of the County Development Plan 2023- 2029 and is in accordance with the land use zoning objective relating to the site. As such the proposed development is considered to be in accordance with the proper planning and sustainable development of the area".*

3.2.4. Other Technical Reports

Housing Section (05/06/2023)

- No objection subject to condition. Part V proposals are deemed acceptable.

Water Services Engineer (29/05/2023)

- No objection subject to condition. Consultation with Uisce Éireann.

South Leitrim Area Office (03/01/2024)

- No objection subject to conditions.

3.3. Prescribed Bodies

Uisce Éireann (01/11/2023)

- 3.3.1. The applicant was requested to liaise with Uisce Éireann to determine the feasibility of the proposed connection to the public watermain and sewer within LCC's request for further information (Item 14).
- 3.3.2. The submission on file from Uisce Éireann attached as Appendix D of the applicant's FI response confirms that water and wastewater connection to the site is feasible without infrastructure upgrade by Uisce Éireann.

3.4. Third Party Observations

Initial Observations

- 3.4.1. 4 no. observation were submitted during the initial public consultation period. The following provides a summary of the key points raised:

- **Scale and Density of Development:** The observations outline that the proposed 10 houses represent an overdevelopment of the site. Reference is made to the previous permission for 5 no. houses on the site.
- **Traffic and Transportation:** The observations raise concern in relation to the traffic impact of the development on the local road network, road safety and insufficient parking for the development.
- **Height-** The observations raise concern in relation to the proposed 3 storey height which it is stated is not in line with the existing character of development within the area.
- **Design –** The observations outline that the proposed houses are poorly designed and bland in appearance.
- **Insufficient Open Space-** The observations outline that the development is underserved by amenity space.
- **Insufficient Housing Mix**

Observation on Further Information

3.4.2. The applicant's FI request was deemed significant by LCC and the applicant was requested to submit revised public notices. 1 no. observation was received in respect of the applicant's FI response. The following provides a summary of the key points raised:

- The observation outlines that the revised proposals do not address the concerns raised in relation to overdevelopment of the site. The parent permission provided for 5 no. houses on the site.
- The observation raises concern in relation to the proposed access arrangements and impacts on pedestrians.
- The observation raises concern in relation to wind tunnel impacts associated with the proposed layout and separation distance between units.
- The proposed roof windows result in overlooking of Units 6-9 in the estate.

4.0 Planning History

The following planning history relates to the site.

- PA Ref: 03/1388 – Permission granted in May 2004 for 37 no. dwellings on the site and adjoining landholding.

5.0 Policy Context

5.1. Development Plan

Leitrim County Development Plan 2023-2029

Chapter 2 Core Strategy

5.1.1. Table 2.2 relates to the Settlement Hierarchy. Ballinamore is designated as a Tier 2A level 'Self-Sustaining Growth Towns'. The Plan identifies that these towns are *"Towns with moderate levels of population that provide important employment and services for their surrounding areas. These self-sustaining towns are served by good transport"*.

5.1.2. Section 2.7 of the Plan relates to Housing Yield from Proposed Zoned Lands. Table 2.2* relates to Yield of available lands zoned for Residential or Mixed-Use purposes. This identifies 20 units/ha on lands zoned New Residential in Tier 2A towns.

** Author Note: The above table is identified as Table 2.2 in the Plan. This is assumed as a typographical error in the plan as Table 2.2 relates to the settlement hierarchy. Based on the sequence of tables in chapter 2, this Table is the 6th (i.e Table 2.6).*

5.1.3. Section 2.11 relates to Core Strategy Policies and Objectives. The following is of relevance:

- CS OBJ 5 To support the regeneration of underused town centre and brownfield/infill lands along with the delivery of existing zoned and serviced lands to facilitate populations growth and achieve sustainable compact growth of 30% of all new housing to be built within the existing urban footprint of the targeted settlements of Carrick on Shannon, Ballinamore and Manorhamilton.

Chapter 6 Urban Settlements

5.1.4. Section 6.9 relates to Density and outlines that:

“The number of residential units to be delivered on a site will be determined in relation to the hierarchical status of the settlement within the Council’s Settlement Hierarchy and its capacity for growth and its access to public transport and necessary social infrastructure...It is important thereafter that the density of new development in towns and villages is reflective of the existing character and that growth is linked to infrastructural capacity”.

5.1.5. The following policies are of relevance:

- *DENSITY POL 1 To promote development at sustainable and appropriate densities that support compact growth and the consolidation of urban areas.*
- *DENSITY POL 3 The appropriate residential density in any particular location will be determined by the following: -*
 - (a) The extent to which the design and layout follows a coherent design brief resulting in a high-quality residential environment;*
 - (b) Proximity to points of access to the public transport network;*
 - (c) The extent to which the site may, due to its size, scale, and location, propose its own density and character, having regard to the need to protect the established character and amenities of existing adjoining residential areas;*
 - (d) Existing topographical, landscape or other features on the site;*
 - (e) The capacity of the infrastructure, including social and community facilities (such as child care), to absorb the demands created by the development; and*
 - (f) Reference to the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG (2009) or any replacement Section 28 Guidelines of relevance to density and residential development in general.*

5.1.6. Section 6.10 of the Plan relates to Land Use Zoning Objectives. The appeal site is zoned for “New Residential” purposes within Map 12 of the Development Plan. Table 6.1 states the zoning objective for ‘New Residential’ seeks *“To provide primarily for new residential development and community services at appropriate*

densities for the positioning of the centre in the Settlement Hierarchy and with an emphasis on quality of design”.

- 5.1.7. Table 6.2 of the Plan sets out the following guidance for development on lands zoned for “New Residential” purposes:

“This zone is intended primarily for housing development but may include a range of other uses particularly those that have the potential to foster the development of new residential communities The Planning Authority will therefore consider favourably other appropriate uses which support the overall residential function of the area. The range of uses identified above in ‘Existing Residential’ zones are also appropriate in ‘New Residential’ zones”.

- 5.1.8. Dwelling is listed as a use which is “*acceptable in principle*” on lands zoned for New Residential Purposes within the Land Use Zoning Matrix set out within Table 6.5 of the Development Plan.

Chapter 13 Development Management Standards

The following Development Management Standards are of relevance:

13.9.1 Building Heights

- 5.1.9. The Plan outlines that *“In general, heights should respect the local context to include streetscape as appropriate. In towns and villages, varied building heights are supported across residential, mixed use and central areas to support consolidation and to create a sense of place, urban legibility and visual diversity. Development proposals that include building heights that are greater than the prevailing building height in the area should be supported by a strong urban design rationale (as part of a Design Statement).*

The appropriate maximum or minimum height of any building will be determined by:

- *The prevailing building height in the surrounding area*
- *The proximity of existing housing*
- *The formation of a cohesive streetscape pattern, including height and scale of proposed development relative to width of street or area of open space, and*
- *The impact on any Protected Structures, Architectural Conservation Areas and/or other sensitive sites”.*

13.9.2 Site Coverage

5.1.10. Site coverage standards are intended to avoid the adverse effects of over-development. The maximum site coverage shall be 50% for residential development.

13.9.3 – Plot Ratio

5.1.11. Plot Ratio Standards are set out within Table 13.1 as follows:

- Town Centre/ Brownfield – 1.0- 2.0
- Suburban/Edge of Town Centre – 0.5-1.0
- Outer Edge of Town – 0.35 to 0.5

13.9.4 Overlooking

5.1.12. The Plan outlines that in general, a minimum distance of 22 metres between opposing above-ground floor level windows is required for habitable rooms.

13.10 Residential Development – Towns and Villages

5.1.13. The Plan outlines that *“Development proposals in the towns and villages of the county should be designed to respect the scale, character and finishes of the local built environment. Proposals located on the edges of built-up areas should be designed to integrate with the existing urban fabric and not create sprawling boundaries to the towns and villages. Infill proposals will be evaluated to ensure that detailed design elements harmonise with adjoining buildings and that overdevelopment of restricted sites does not result”*.

5.1.14. The following guidance documents should be consulted (unless otherwise updated) when designing a residential development:

- (i) ‘The Guidelines on Quality Housing for Sustainable Communities’, DEHLG, (2007);
- (ii) ‘The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’, DEHLG, (2009);
- (iii) ‘Urban Design Manual: A Best Practice Guide’, DEHLG, (2009);
- (iv) ‘Sustainable Urban Housing: Design Standards for New Apartments’, DHPLG, (2018);
- (v) ‘Urban Development and Building Height Guidelines’, DHPLG, (2018);

- (vi) The Design Manual for Urban Roads and Streets', DTTAS and DECLG, (2013 and updated in 2019);
- (vii) 'Permeability Best Practice Guide', NTA, (2015); and
- (viii) 'Recommendations for Site Development Works for Housing Areas' (1998).

13.10.1 Density

5.1.15. The Plan outlines that indicative density levels are set out in Table 2.6 of Chapter 2.

13.10.3 Residential Amenity

5.1.16. In terms of residential amenity proposed residential schemes shall be designed having regard to the following:

- The need to protect amenities of existing residents in the locality of the subject development
- A minimum 22m separation between directly opposing first floor habitable rooms in residential properties shall generally be observed
- A minimum of 2.0-2.5m distance between detached and semi-detached dwellings shall generally be provided
- Generally, windows in the gable/side walls of dwellings will not be permitted where the window would closely overlook the curtilage of the adjoining dwelling
- Adequate provision shall be made for the storage (3 wheelie bins) and collection of waste materials
- Terraced/townhouses shall provide appropriately located screened bin storage locations which shall be identified in the planning application. Where communal bin facilities are being provided, they shall be conveniently located, screened, and well ventilated
- Minimise overshadowing by applying the recommendations of 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' – Second Edition (B.R.E.), and

- Car parking for detached and semi-detached housing should be within the curtilage of the house and not on the roadway. Car parking for apartments and terraced housing should be arranged in informal groups overlooked by housing units. The visual impact of large areas of car parking should be reduced by the use of screen planting, low walls and the use of textured or coloured paving for parking bays.

13.10.5 Private Open Space Requirements for Dwelling House Types

5.1.17. Table 13.3 sets out the following Minimum Private Open Space Requirements for Dwelling House Types.

- One/ Two Bedroom – 55m²
- Three Bed 60m²
- Four Bed or more 75 m²

Volume II – Settlement Plan – Ballinamore

5.1.18. Volume II of the Development Plan sets out Settlement Plans for settlements within the County. Section 2 relates to Ballinamore and its designation as a Tier 2A *Self Sustaining Growth Town*. Objective BNE 1 seeks to “*Promote and facilitate residential growth, the expansion of local employment options and of the range of services and facilities in tandem with the development of sustainable transport options to enable Ballinamore to become more self-sustaining and fulfil its role as a Tier 2A Self Sustaining Growth Town in Co. Leitrim*”.

5.1.19. Section 2.6 of the Plan relates to Residential Development in the town and outlines that “*Given its designation as a Tier 2A Self Sustaining Growth Town under the Leitrim County Settlement Hierarchy, Ballinamore is seen as a key centre for accommodating future residential development over the plan period*”.

5.1.20. Ballinamore is proposed to accommodate an additional 97 no. residential units for the period 2022-2028. Accordingly the Core Strategy of this plan has identified a quantum of 5.29 ha of New Residential zoned lands and 2.24 ha of Mixed Use zoned lands within Ballinamore to accommodate this projected housing target.

5.1.21. The Plan specifically refers to the appeal site and outlines that the vast majority of the New Residential zoned lands comprise of infill sites on lands to the south and

west of Páirc Feá residential scheme, at Lahard and Willowfield Road, on the northwestern side of Park Road (R.202), at Kiltymoodan and at Aghadark on the southwestern fringe of the town

5.1.22. The following residential development objectives are of relevance:

- *BNE 15 Require that an appropriate mix of housing type, tenure, density and size is provided for in all new residential areas and in appropriate brownfield/infill areas to meet the demands of the population of Ballinamore and in line with the objectives and targets of the Core Strategy.*
- *BNE 16 Encourage the appropriate redevelopment of brownfield and infill sites for residential uses within the footprint of the existing built-up area.*

5.2. **Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities**

5.2.1. Section 3.3.5 of the Sustainable Residential Development and Compact Settlement Guidelines relates to Settlement, Area Types and Density Ranges for Rural Towns and Villages (<1,500 population). According to the 2022 Census Ballinamore had a population of 1,112 in 2022. The town therefore falls within this category.

5.2.2. The guidelines outline the following in respect of settlements within this category.

“The key priorities for compact growth in Rural Towns and Villages in order of priority are to:

- (a) strengthen the existing urban core through the adaptation, re-use and intensification of existing building stock,*
- (b) realise opportunities for infill and backland development, and*
- (c) provide for sequential and sustainable housing development at the edge of the settlement at suitable locations that are closest to the urban core and are integrated into, or can be integrated into the existing built up footprint of the settlement and can be serviced by necessary supporting infrastructure”.*

5.2.3. Table 3.7 relates to Density Ranges for Rural Towns and Villages and outlines the following: *“Rural Towns and Villages are small in scale with limited infrastructure and services provision. It is a policy and objective of these Guidelines that development in rural towns and villages is tailored to the scale, form and character of the*

settlement and the capacity of services and infrastructure (including public transport and water services infrastructure). Lands zoned for housing at the edge of rural towns and villages at locations that can be integrated into the settlement and are connected to existing walking and cycling networks can offer an effective alternative, including serviced sites, to the provision of single houses in the countryside. The density of development at such locations should respond in a positive way to the established context”.

5.2.4. The following SPPR's as set out within the Guidelines are of relevance:

SPPR 1 – Separation Distances

SPPR 1 - Separation Distances It is a specific planning policy requirement of these Guidelines that statutory development plans¹⁵ shall not include an objective in respect of minimum separation distances that exceed 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units or apartment units above ground floor level. When considering a planning application for residential development, a separation distance of at least 16 metres between opposing windows serving habitable rooms¹⁶ at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained. Separation distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity spaces.

There shall be no specified minimum separation distance at ground level or to the front of houses, duplex units and apartment units in statutory development plans and planning applications shall be determined on a case-by-case basis to prevent undue loss of privacy.

SPPR 2: Minimum Private Open Space Standards for Houses

SPPR 2: It is a specific planning policy requirement of these Guidelines that proposals for new houses meet the following minimum private open space standards:

- *1 bed house 20 sq.m*
- *2 bed house 30 sq.m*

- 3 bed house 40 sq.m
- 4 bed + house 50 sq.m

A further reduction below the minimum standard may be considered acceptable where an equivalent amount of high quality semi-private open space is provided in lieu of the private open space, subject to at least 50 percent of the area being provided as private open space (see Table 5.1 below). The planning authority should be satisfied that the compensatory semi-private open space will provide a high standard of amenity for all users and that it is well integrated and accessible to the housing units it serves.....

For building refurbishment schemes on sites of any size or urban infill schemes on smaller sites (e.g. sites of up to 0.25ha) the private open space standard may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality and proximity to public open space.

In all cases, the obligation will be on the project proposer to demonstrate to the satisfaction of the planning authority or An Bord Pleanála that residents will enjoy a high standard of amenity.

- 5.2.5. Section 4.4 relates to key indicators of quality urban design and placemaking including (i) Sustainable and Efficient Movement (ii) Mix and Distribution of Uses (iii) Green and Blue Infrastructure (iv) Public Open Space and (v) Responsive Built Form.

5.3. Natural Heritage Designations

- 5.3.1. The appeal site is not located within any designated European site. The nearest designated European sites to the appeal site, including SAC's and Special Protection Areas (SPA's) include the following:

- Corduff Lough p NHA – 3.5 km
- Cromlin Bridge Wood p NHA – 4.1 km
- Garadice Lough Wood p NHA – 6 km
- Cuilcagh - Anierin Uplands p NHA – 7.4 km
- Cuilcagh - Anierin Uplands SAC – 7.4 km

5.4. EIA Screening

5.4.1. The proposed development falls within the categories of 'Infrastructural Projects', under Schedule 5, Part 2 of the Planning and Development Regulations 2001-2020, where mandatory EIA is required in the following circumstances:

- 10(b) (i) Construction of more than 500 dwelling units.
- (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.

5.4.2. The subject development comprises construction of 7 no. residential units on a site with a stated area of 0.298ha. The proposed development falls well below the development threshold and mandatory EIA is therefore not required.

5.4.3. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for sub-threshold 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

A third-party appeal was submitted on behalf of Francis McTague, Park Road, Ballinamore in respect of the notification of decision of Leitrim County Council to grant permission for the proposed development. The following provides a summary of the grounds of appeal.

- The appeal refers to the planner's report prepared in respect of the application and the reference to demonstration of sufficient legal interest. The appeal outlines that this was raised within LCC's request for further information. The appeal questions the stated ownership of the lands by the applicant, Frank Maxwell and refers to land registry folios.
- Access to Páirc Feá is not on lands within the red or blue line boundary. The appeal outlines that the applicant does not own any adjoining nearby or

contiguous property. The appeal outlines that the written consent of existing homeowners is required to permit access via a private estate road. The appeal outlines that the application is invalid.

- The appeal refers to the planning history pertaining to the site wherein permission was previously granted for 37 houses under PA Ref: 03/1388 and 32 were built. The application relates to permission for 10 no. houses on the site of the previously permitted 5 units. This was subsequently reduced to 7.
- The appeal refers to administrative errors within the planner's reports in respect of landownership. It is stated that the reference to Section 34 (13) of the Act within the report does not address the main issue.
- The appeal outlines that the applicant is not the owner of the application site or Aviance Commercial Limited. The written consent of the owner of the application site was not submitted, and the application should be deemed invalid. The appeal requests An Bord Pleanála to refuse permission for the development.
- The appeal raises the following concerns in relation to the design and layout of the development:
 - The design is bland and gives rise to overlooking particularly from the velux windows.
 - Water and sewerage connections are located under the private road.
 - The private open space has the same legal title issues as the road. The appeal questions the consent to use this open space.
 - The appeal questions liability in the instance of accidents on the open space and private road.
- The appeal requests that An Bord Pleanála refuses permission for the development.

6.2. Applicant Response

A response to the third-party appeal was submitted on behalf of the applicant. The following provides a summary of the key points raised:

- The correspondence outlines that the applicant, Mr. Frank Maxwell is the owner of the application site. The application site is contained in Folio No. LM 9552 which is owned by Aviance Commercial Limited, LM13311F which is owned by Aviance Commercial Limited and LM12683F which is owned by Mr. Frank Maxwell. The appeal response refers to Appendix C of the correspondence which indicates that the applicant, Frank Maxwell, is a Director of Aviance Commercial Limited.

6.3. Planning Authority Response

Leitrim County Council provided a response to the grounds of appeal. The following provides a summary of the key points raised:

- The correspondence cross refers to the planning reports dated the 11th of July 2023 and the 16th of January 2024 in which all the relevant planning aspects of the proposed development were assessed. The response outlines that the appeal does not raise any new planning issues which are not already addressed in the assessment of the planning application.
- The correspondence refers to the location of the site within the development boundary of Ballinamore on lands zoned for new residential purposes. The Planning Authority are satisfied that the development is in accordance with the provisions of the Leitrim County Development Plan 2023-2029 and the proposal is deemed to be in accordance with the proper planning and sustainable development of the area.
- The Planning Authority requests An Bord Pleanála to uphold the decision of LCC to grant permission for the development.

7.0 Assessment

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

- Principle of Development – Compliance with Policy
- Access/Legal Consent
- Design, Layout and Impact on Residential Amenity

7.2. Principle of Development – Compliance with Policy

- 7.2.1. The appeal site is located within the development boundary of Ballinamore and zoned for “New Residential” purposes within the Leitrim County Development Plan 2023-2029. Ballinamore is identified as a Tier 2A Self Sustaining Growth Town within the settlement hierarchy set out within the Development Plan. The policies and objectives of the plan support residential development and compact growth within such settlements (CS OBJ 5, BNE 1, BNE 16). The appeal site is specifically identified as an infill site with potential to accommodate new residential development within Volume II Section 2.6 the Leitrim County Development Plan.
- 7.2.2. I refer to the planning history of the site wherein permission was granted for 5 units on the appeal site as part of a larger development of 37 units permitted under PA Ref. 03/1388. 32 of the permitted houses were completed under this permission at the existing Páirc Féa development. The remaining 5 houses were permitted on the appeal site. The site is currently overgrown and contributes little to the amenity of the area. I consider that the development of the site would enhance the residential and visual amenity of the area particularly for existing residents in the immediate vicinity of the site where the unfinished nature of the development is most evident.
- 7.2.3. The proposal, as revised in response to LCC’s request for further information, seeks the construction of 7 no. units on the 0.298 ha site yielding a gross density of 23 units per hectare. I consider that the proposed density it is acceptable having regard to the provisions of the Leitrim County Development and the Sustainable Residential Development and Compact Settlement Guidelines, the existing pattern of housing in the immediate vicinity of the site and the planning history for the area.

7.2.4. In conclusion, I consider that the principle of the development of residentially zoned lands within the settlement boundary of Ballinamore for residential purposes is acceptable subject to appropriate design, layout, residential amenity and access considerations.

7.3. Access / Legal Consent

7.3.1. Access to the proposed residential units is proposed via the existing road to the south of the site which serves the existing dwellings at Páirc Feá. The existing access to Páirc Féa runs in a straight alignment in the vicinity of the site. I am satisfied that there are no obstructions to visibility at the proposed entrance and note that LCC have not raised objection to the principle of the proposed access arrangements.

7.3.2. The primary grounds of appeal relates to the legal consent of the applicant to use the existing access road at Páirc Feá and associated connection to existing services along this road together with access to existing public open space. Leitrim County Council have confirmed that this access road not been taken in charge by the planning authority.

7.3.3. The issue of landownership was raised within Leitrim County Council's request for further information. I refer to Item 6 of LCC's FI request which outlined the following:

"It has been noted that you are proposing to utilise the existing access road which serves Páirc Feá estate to access your site. This estate is not in charge and the road in question is not a public road. No wayleave agreement from the relevant landowner allowing access onto this private estate road has been submitted. You are therefore requested to submit a letter of consent from the relevant landowner facilitating access and details of any wayleave agreement. Any existing/proposed wayleave should be indicated on a revised site layout plan".

7.3.4. The applicant's FI response includes screenshots taken from Land Direct illustrating the relevant folio numbers and landholdings together with relevant deeds. The FI response outlines that the applicant is the owner of the site together with the existing roads and services associated with the Páirc Feá residential estate. I refer to the attached deeds which outlines the following ownership:

- Folio No. LM 9552 - Aviance Commercial Limited

- Folio No. LM13311F - Aviance Commercial Limited
- Folio No. LM12683F - Frank Maxwell

- 7.3.5. The appeal outlines that the applicant is not the owner of the application site or Aviance Commercial Limited. The appeal outlines that the applicant has not demonstrated sufficient legal consent to connect to the existing private road and services serving the estate. The appeal outlines that the application should have been deemed invalid by LCC and requests An Bord Pleanála to refuse permission for the development on this basis.
- 7.3.6. I refer to the applicant's response to the grounds of appeal which outlines that the applicant, Mr. Frank Maxwell is the owner of the application site. The application site is contained in Folio No. LM 9552 which is owned by Aviance Commercial Limited, LM13311F which is owned by Aviance Commercial Limited and LM12683F which is owned by Mr. Frank Maxwell. The appeal response refers to Appendix C of the correspondence which indicates that the applicant, Frank Maxwell, is a Director of Aviance Commercial Limited. I also refer to the planning history of the appeal site wherein under PA Ref 03/1388 permission was granted for 37 no. houses on site as part of a larger development. The applicant for the permitted development was Frank Maxell.
- 7.3.7. On review of the grounds of appeal, I am of the view that the issues raised in the appeal relating to ownership and consent are civil matters and are not matters that the Board can consider. In this regard, Section 34 (13) of the Planning and Development Act states that, 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'.
- 7.3.8. Section 5.13 of the Development Management Guidelines (DEHLG, 2007) provides further guidance on this matter, stating that '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'.
- 7.3.9. Notwithstanding the above, I note that the question of ownership was raised by LCC within their request for further information and the applicant confirmed ownership. The FI response was deemed acceptable to Leitrim County Council. It is my view that the applicant has demonstrated sufficient legal interest. I do not recommend that permission is refused for the development on this basis.

7.4. Design, Layout and Impact on Residential Amenity

Design and Layout

- 7.4.1. The development includes the provision of 7 no. residential units on site. The units are arranged in a linear fashion and set back from the R202. Access to the development is proposed via the Páirc Féa access road to the south of the site.
- 7.4.2. I note the concerns raised within LCC'S request for further information in relation to the design and unit mix of the proposed development. I am satisfied that these have been addressed within the applicants FI response. I consider that the proposed dwelling mix will format/typology will promote a mix in tenure within the development. Dwelling materials of brick and render reflect those established within existing properties in the area.

Impact on Residential Amenity

- 7.4.3. In terms of the residential amenity of the proposed units I note that the internal layout of each of the proposed houses, in particular the combined living space and bedrooms, exceeds the recommendations of the Quality Housing for Sustainable Communities (2007) guidelines. I note that private open space for each dwelling is provided in excess of the guidance set out within the Leitrim County Development Plan.
- 7.4.4. The appeal raises concern in relation to the impact of the proposed residential units on the residential amenity of existing units to the east of the site. Particular concerns are raised in relation to overlooking from the proposed velux windows on House Type B (Units 2,3,6 and 7) in this regard.
- 7.4.5. On an overall basis, I consider that the development has been designed to negate against overlooking of existing residential units at Páirc Feá. I refer to the Site Layout Plan, Drawing no. 01 which illustrates a separation distance of 22m between proposed houses nos. 06 and 07 and existing dwellings at Páirc Feá to the southeast. These dwellings have a garden depth of 11.6m and the proposed boundary treatment includes a 2m high wall to the rear of properties.
- 7.4.6. The proposed separation distances are in accordance with the standards set out within the Leitrim County Development Plan and in excess of the standards set out within SPPR 1 of the Sustainable Residential Development and Compact

Settlements Guidelines for Planning Authorities which outlines that *“When considering a planning application for residential development, a separation distance of at least 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained.*

- 7.4.7. On the basis of the proposed separation distance between existing and proposed dwellings and the proposed boundary treatment, I do not consider that the proposal will result in overlooking of existing properties on Páirc Feá. I do not consider that the proposed development would detrimentally impact on the residential amenity of existing dwellings within the vicinity of the site.
- 7.4.8. Overall, it is my opinion that the proposed separation distances between the proposed and existing units and the design and layout of the scheme achieves a balance of protecting the residential amenities of existing residents in the area and providing a quality amenity for future occupants.

8.0 AA Screening

- 8.1. I have considered the proposed residential development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located within to the north of Ballinamore town centre where the closest Natura 2000 site is the Cuilcagh - Anierin Uplands SAC which is located 7.4 km northwest of the appeal site.
- 8.2. An Appropriate Assessment Screening Report prepared by Cunningham Design and Planning was submitted in support of the application. The report outlines that the appeal site is not located within the vicinity of any designated Natura 2000 site and concludes that the proposal will not give rise to significant adverse impacts on the integrity of any Natura 2000 site.
- 8.3. The development is summarised at Section 2 of this Report. In summary, permission is sought for construction of 7 no. residential units on site access and associated site development works. The site is served by the public water and foul water networks and Uisce Éireann have confirmed the feasibility of the proposed connections. No nature conservation concerns were raised in the planning appeal with respect to Natura 2000 sites.

8.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The small-scale nature of the development.
- The location of the site within an urban area and proposed connections to existing public infrastructure.
- The nature of intervening development between the appeal site and closest Natura 2000 site and the lack of direct connections between same.

8.5. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

8.6. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend that permission is GRANTED for the development in accordance with the following reasons and considerations.

10.0 Reasons and Considerations

Having regard to the zoning objectives for the site as set out within the Leitrim County Development Plan 2023-2029, the pattern of development in the area and the nature and scale of the proposed development it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the residential or visual amenities of the area and would be acceptable in terms of the safety and convenience of pedestrians and road users. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further information submitted on the 4th of December 2023 and the 15th of December 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. This permission is for a total of 7 no. residential units.

Reason: In the interest of clarity

3. Prior to the commencement of development, the developer shall submit revised plans for written agreement of the Planning Authority which illustrate the following:

- (i) The 2m high block wall shall be extended in line with the front building line of the dwelling on Site no. 7.
- (ii) The provision of at least one car parking space equipped with two EV charging points with the remainder of the car parking spaces constructed so as to be capable of accommodating future charging points as required.

Reason: In the interest of residential amenity and to provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.

4. External finishes to the proposed development, shall be as detailed on the plans submitted to the planning authority on the 4th and 15th of December 2023 unless otherwise agreed in writing with the planning authority.

Reason: In the interests of visual amenity.

5. The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure a satisfactory completion and maintenance of the development in the interests of residential amenity.

6. Boundary treatment shall be in accordance with the details illustrated on Drawing no. 1 Boundary Treatment and Landscaping Layout submitted to the planning authority on the 15th of December 2023 save for the following amendment:

- (i) The proposed 2m block walls shall be capped and plastered on both sides.

Reason: In the interests of visual and residential amenity.

7. Prior to the commencement of development, full details of the proposed street lighting (to include column type and height and lantern type and energy rating) shall be submitted for written agreement of the Planning Authority.

Reason: In order to provide appropriate lighting to serve the development.

8. Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

9. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the requirements of Leitrim County Council and in all respects with the standards set out in the Design Manual for Urban Roads and Streets (DMURS).

Reason: In the interests of pedestrian and traffic safety.

10. Proposals for a naming scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all street signs, and apartment numbers, shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

11. The applicant shall enter into water and wastewater connection agreements with Uisce Éireann, prior to commencement of development.

Reason: In the interest of public health.

12. 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 amenity.

13. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management

Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

14. The construction of 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. The plan shall provide a demolition management plan, together with details of intended construction practice for the development, including a detailed traffic management plan, pollution control and contingency plan, hours of working, and noise/dust management measures.

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

15. 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.

16. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the Local Authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and

agreed in writing with, the Planning Authority prior to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

17. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

18. (a) Prior to the commencement of any house in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house unit), pursuant to Section 47 of the Planning and Development Act, 2000, that restricts all houses permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex unit for use by individual

purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

19. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

20. 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 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.

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.

Stephanie Farrington
Senior Planning Inspector

21st of August 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	319017-24		
Proposed Development Summary	Construction of 7 houses access and associated site development works.		
Development Address	Páirc Feá, Park Road, Ballinamore, Co. Leitrim		
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	No further action required
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		Class.....	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)
No		N/A	No EIAR or Preliminary Examination required
Yes	X	Class 10(b) of Schedule 5 to Part 2	Proceed to Q.4

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

Inspector: _____ Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	319017-24	
Proposed Development Summary	Construction of 7 houses, access and associated site development works.	
Development Address	Páirc Feá, Park Road, Ballinamore, Co. Leitrim	
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?	No. The development is located within an existing urban context. No significant waste, emissions or pollutants are envisaged.	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		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 on an ecologically sensitive site or location? Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	No	No No
<div> • Conclusion </div>		
There is no real likelihood of significant effects on the environment. EIA not required. X	• There is significant and realistic doubt regarding the likelihood of significant effects on the environment. Schedule 7A Information required to enable a Screening Determination to be carried out.	There is a real likelihood of significant effects on the environment. EIAR required.

Inspector: _____

Date: _____