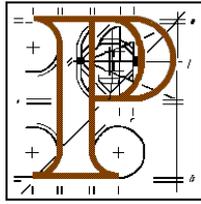


# An Bord Pleanála



## Inspector's Report

**Appeal Reference:** PL27.243561

**Development:** Residential development consisting of 19 no. 3-bed townhouses on a site of c. 0.5 hectare within an overall residential/ commercial development partially completed (Reg. Ref: 04/1538) in Newtownmountkennedy Village adjoining Glenbrook Estate and New Town Centre.

### Planning Application

Planning Authority: Wicklow County Council  
Planning Authority Reg. Ref.: 14/1329  
Applicant: Dwyer Nolan Development Ltd.  
Type of Application: Permission  
Planning Authority Decision: Refuse permission

### Planning Appeal

Appellants: Dwyer Nolan Development Ltd.  
Type of Appeal: First Party  
Observer(s): None  
Date of Site Inspection: 1<sup>st</sup> September 2014

**Inspector:** Donal Donnelly

**Appendices:** Photographs and maps

## **1. SITE LOCATION AND DESCRIPTION**

- 1.1 The appeal site is located within the centre of Newtownmountkennedy in eastern Co. Wicklow. Newtownmountkennedy has developed in a linear form along Main Street, which forms part of the R772 (old N11). There is no defined town centre along this street and retail/ commercial premises are aligned mainly on the western side due to falling levels to the east.
- 1.2 The appeal site is located on the eastern side of Main Street to the north of the church. The site forms part of the Newtownmountkennedy town centre development which comprises a partially completed mixed use scheme on a 3.76 hectare site. The overall site in the applicant's ownership is bounded by a hotel to the north and a school to the south. There are two frontages onto Main Street that facilitate access to the site and pedestrian entrance to the retail element of the scheme. To the north of the applicant's lands is an open space corridor along a river.
- 1.3 The original town centre proposal was to contain 119 no. residential units, a supermarket, cafe, 11 no. retail units, 2 no. offices, a crèche, group medical practice, nursing home, hotel and a gym. An amendments application increased the number of apartments in Block D from 18 no. to 32 no. and within Block H from 7 no. to 8 no. apartments.
- 1.4 The scheme is largely completed and works to finish off the development have recommenced. The hotel to the north of the site and the medical centre are operational and there is also a supermarket, pharmacy, crèche, butchers and hairdressers, as well as apartments within Block A to the front of the scheme. Residential Blocks E, F, G & J are constructed and appear to be well occupied. At the time of my site visit, residential Block D was under construction. Only the foundations of Buildings H and C were in place and work on these buildings has ceased. Block C was to be developed as a nursing home and Block H was to be an apartment block with oval floor plate.
- 1.5 The appeal site is presently a construction site that includes the area occupied by previously proposed Blocks C & H and surrounding lands intended as open space, parking and for access. The service road from Main Street is also included within the site boundary. The main body of the appeal site is roughly square shaped and the stated area is c. 0.5 hectare.

## **2. PROPOSED DEVELOPMENT**

- 2.1 The proposed development as described on site notices is for 19 no. 2-storey 3-bed townhouses including open space and all associated works within the overall residential/ commercial development permitted under Reg. Ref: 04/1538.
- 2.2 The proposed development will replace the previously permitted apartment Block H and the 2,666.8 sq.m. nursing home that would have occupied Block C. The open nature of the permitted public open space will make way for a more enclosed space located to the north-east of the site with stated area of

c. 1,120 sq.m. On-street car parking along the service road to the west and south of the site will remain much the same as the permitted layout. In total, there will be 27 no. spaces available to serve the proposed development.

- 2.3 The proposed townhouses will be constructed as three terraces of four dwellings, one terrace of three dwellings and two semi-detached pairs. All dwellings will face outwards towards site boundaries and rear gardens will back onto rear/ side boundaries. Garden areas will range between 57 sq.m. and 72 sq.m.
- 2.4 The proposed dwellings will have pitched roofs with maximum height of 8.68m. Gable projections are proposed on elevations. External finishes will comprise of plaster paint and light yellow brick. The entrances to three of the dwellings (type A) will be from the side with the remainder to the front. There are three dwelling types broken down as follows:
- 3 no. end of terrace units with floor area of 105 sq.m.
  - 8 no. mid/ end of terrace/ semi-detached units with floor area of 106 sq.m.
  - 8 no. mid/ end of terrace/ semi-detached units with floor area of 106 sq.m.

### **3. TECHNICAL REPORTS**

- 3.1 The recommendation to refuse permission, as outlined within the Planning Report, reflects the decision issued by the Planning Authority. Issues addressed under the assessment of the proposal include development principle, density, settlement strategy, house design, layout, open space, roads/ access and parking, services and social and affordable housing.
- 3.2 With respect to development principle, it is stated that development land within town centres is a finite resource, and where inappropriately developed/ undeveloped, could have the effect of forcing land uses into the surrounding suburb, thereby undermining the town centre. It is considered there should be a more long term vision of facilitating town centre development rather than for the sole purpose of meeting market demand. However, the proposal is being assessed within the context of the overall new town centre development, which already incorporates a mix of uses, including high density residential development. In these circumstances, the Case Planner considers that the provision of townhouses fits into the context of the wider town centre scheme and is therefore acceptable in principle.
- 3.3 The plot ratio of the site is considered to be low for town centre lands; however, it is stated that the density of the scheme should be secondary to qualitative standards given the infill nature of the site.
- 3.4 In terms of Settlement Strategy, the Case Planner refers to Development Plan Objective UD5, where a minimum of 20% of new houses in any new multi-house development shall be sold to persons living/ working in Co. Wicklow for at least a year.

- 3.5 The design of the proposed houses is stated to be relatively standard. It is considered that the removal of the front door and a first floor window from the end of terrace units results in a poor design that detracts from the terrace. There are also concerns with the external brick finish.
- 3.6 It is highlighted that the layout of the scheme must fit within the context of the overall town centre scheme, and with the advice contained within the 'Urban Design Manual, a Best Practice Guide'. In this regard, the Case Planner is not satisfied that the proposed layout is appropriate. It is considered that the development does not respond well with its surroundings; will reduce connectivity; will erode public realm; and will not instil a sense of place.
- 3.7 There are concerns with the location of proposed public open space and the poor extent of overlooking by the proposed dwellings that will be served by this area. It is also noted that the public open spaces previously permitted at this location would have served the overall town centre development. The proposal will see a reduction in the quantum and quality of public realm as originally designed, together with the removal of pedestrian linkages. In addition, it is noted that private open space will also fall below the minimum standard within 11 of the proposed 19 units.
- 3.8 There is a shortfall of 11 no. car parking spaces to serve the proposed town houses and this is considered to be insufficient. The location of the parking spaces is also stated to be inappropriate.
- 3.9 Proposals for compliance with Part V are considered to be inadequate and Irish Water has requested further information on the proposed development.
- 3.10 It is concluded that the layout of the scheme in particular would result in an inadequate level of residential amenity for existing and future residents. It is noted that the concerns of the Planning Authority cannot be addressed without a total redesign of the scheme.

#### **4. PLANNING AUTHORITY'S DECISION**

- 4.1 Wicklow County Council issued a notification of decision to refuse permission for the proposed development for three reasons.
- 4.2 It is stated under the first reason for refusal that the proposed development does not comply with the development standards for urban residential development in that the proposal has not been effectively integrated with its surroundings, does not instil a sense of place and results in the erosion of the public realm and a reduction in connectivity. It is also considered that there would be inadequate and poorly located public and private open space and car parking.
- 4.3 Under the second reason for refusal, it is confirmed that no evidence regarding the Council's local need policy has been submitted. It is considered under the third reason that the developer has failed to specify compliance with

Section 96 of Part V of the Planning and Development Act, 2000 (as amended).

## **5. APPEAL GROUNDS**

5.1 A first party appeal against the Council's decision was submitted on behalf of the applicant. The grounds of appeal and main points raised in this submission can be summarised as follows:

- Reasons for refusal are fundamental and based on general policy statements in the Development Plan and Guidelines and are not matters of detail. Additional information should be been sought on such matters or Conditioned.
- There is no longer an operator willing to manage a nursing home due to its size and the apartment block as designed is no longer marketable or financially viable – it was decided that a more appropriate use of the site was for townhouses.
- Layout was devised taking into account site restrictions including services, car parking, open space and orientation.
- Car parking spaces provided along the service road are available to serve the proposed development as they will not be required for the 8 no. apartments and nursing home being omitted from the development.
- Net area of the site is approximately 0.47 hectare and the provision of 0.12 hectare of public open space represents 25% of the site – open space along with the major open space already provided on the overall lands is adequate in this town centre location. Location of open space is still central and available to all occupants of the proposed development.
- Houses have been laid out facing the street and on-street parking and a 0.5m planted strip is provided to separate dwellings from the footpath.
- Minor adjustments can be made to rear garden boundary walls to comply with the 60 sq.m. minimum private open space standard – this could be carried out by way of condition. Rear gardens are considered to be satisfactory and it is noted that within DoE Guidelines a minimum of 48 sq.m. is acceptable.
- Gables of houses 1 and 16-19 have been aligned with the structural wall of the underground car parking, and gables of houses 7, 15 & 16 have been provided with entrances for elevational variety and passive surveillance over public areas.
- Houses 8-15 and 16-19 will be on a level gradient – level difference will be addressed along the boundary of rear walls. There will be a 1.3m difference in levels along houses 1-7.

- Proposed dwellings will be finished with similar materials, texture and colour and when completed the entire development will be presented as a coherent whole.
- Provision of social and affordable housing for the entire site has already been agreed with the Council, including that for the 8 no. permitted apartments – additional 11 no. houses may have a requirement for 2 no. units which can be made available by way of condition.
- Proposed development is in response to a complete change in circumstances since the original grant of permission – layout is the best possible solution for the site and is consistent with Council policies and requirements.
- There is nothing in the Planner's Report which would suggest that a refusal is warranted for the application in the context of that already permitted.
- Proposal complies with Development Plan requirements for residential development and with the DoE Guidelines for Residential Development and the Urban Design Guidelines.
- There is no issue in regard to complying with the Wicklow Settlement Strategy.
- Gable elevations onto public areas will benefit from having entrance doors as they provide a variety to the fenestrations and improve the internal layouts.
- Provision of 19 no. houses and a central open space area for the entire development with houses facing onto existing service roads does not reduce pedestrian penetration or connectivity between elements of the overall development.
- Centrally located open space is provided at a rate of 20% of the site and is overlapped with other open spaces within the scheme.
- Car parking requirement for permitted development is equivalent to that now required – it is up to the management company to regulate the use of these spaces.
- Board should grant permission for the proposed development or seek modified drawings showing minor alterations it might feel benefits this modest scheme of 19 no. townhouses within the overall development.
- Refusal of permission will delay the completion of the overall development, which is not warranted for a scheme that is acceptable in principle.

## 6. RESPONSE

### Second Party

6.1 The Planning Authority responded to the first party appeal with the following comments:

- It would appear that the grounds of appeal are based mainly on the applicant's opinion that the reasons for refusal are at variance with the advice given at pre-planning stage – it appears that the applicant is relying upon pre-planning consultation in the formal planning process.
- Advice given at pre-planning stage was taken into consideration in the assessment of this application and it was considered that the proposed scheme did not comply with the development standards for urban residential development as set out in current policy documents.
- It was considered that the main issues of concern, in particular the layout of the development, could not be addressed by way of condition or further information.
- Redesign of the scheme with stronger emphasis on 'qualitative' standards, such as how the development will fit into its surroundings, public and private open space provision, and the achievement of a high quality residential amenity, etc. would be required.
- Limitations of the site were and are acknowledged but these limitations do not justify the granting of a sub-standard development.
- These lands were developed within the context of an overall 'masterplan' and the application site is the last remaining undeveloped portion – alterations may be acceptable in principle but must be designed to fit with the context. This has not been achieved and there is no evidence to suggest that this was a consideration in the design process.
- Proposed development would result in an inadequate level of residential amenity and would set an undesirable precedent.
- Applicant's failure to comply with Section 22(2)(e) of the Regulations regarding Part V should have resulted in an invalidation of the application – issue was included in reasons for refusal to highlight the importance of compliance with Part V in respect of this and future applications.

## 7. PLANNING HISTORY

### Wicklow County Council Reg. Ref: 04/1538 (PL27.212815)

7.1 Wicklow County Council issued notification of decision to grant permission for a mixed use development comprising 119 residential units and supermarket,

cafe, 11 no. retail units, 2 no. offices, crèche, group medical practice, nursing home, hotel and gym.

- 7.2 Following a first party appeal, the Board directed the Council to remove a special development contributions decision, (Board Order dated 15<sup>th</sup> December 2005).

Wicklow County Council Reg. Ref: 06/6502

- 7.3 Dwyer Nolan Developments Ltd was granted permission on 13th December 2006 for amendments to previously approved Reg. Ref: 04/1538 by constructing a lean-to glazed conservatory to the south facing side of the hotel (Blocks K and L). The location of this development is at the northern end of the 3.76 hectare site.

Wicklow County Council Reg. Ref: 06/6954

- 7.4 Dwyer Nolan Developments Ltd. was granted permission on 15th February 2007 for amendments to Reg. Ref: 04/1538 for the redesign of residential Blocks D and H, together with revised balconies, terraces, open spaces, bin stores, boundary treatment, paths, landscaping, and associated infrastructure site works. Block D will be 4 stories of residential accommodation comprising of 32 no. units (4 no. 1 bed apartments, 8 no. 2 bed apartments, 12 no. 2 bed duplexes and 8 no. 3 bed duplexes), 34 no. car parking spaces located to the rear with new vehicular entrance underneath a first floor landscaped podium with access core. Block H will be 4 stories of residential accommodation comprising 8 no. 2 bed apartments. The total number of proposed residential units for this application is 40.

Wicklow County Council Reg. Ref: 07/568

- 7.5 Dwyer Nolan Developments Ltd. was granted permission on 10th May 2007 for modifications to the delivery area of the supermarket accommodation, car park & retail units of Block A of the previously approved Reg. Ref: 04/1538.

Wicklow County Council Reg. Ref: 08/909

- 7.6 Dwyer Nolan Developments Ltd. was granted permission on 17th July 2008 for amendments to previously approved Reg. Refs: 04/1538 and 07/568 to include the construction of a 7m high totem pole sign on the site which will serve as an ancillary structure to the commercial Block A, 3 no. individually lit lettered wall signs and 1 no. wall mounted sign.

Wicklow County Council Reg. Ref: 12/6128

- 7.7 Dwyer Nolan Development Ltd. was granted permission for extension of the appropriate period of permission Reg. Ref: 06/6954. The new expiry date is 31st July 2017.

## 8. DEVELOPMENT PLAN

### Newtownmountkennedy Local Area Plan, 2008

- 8.1 The appeal site is within the area covered by the Newtownmountkennedy Local Area Plan 2008-2016 and is zoned 'TC: Town Centre' where it is the objective *'to provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic use, and to provide for 'Living Over the Shop' residential accommodation, or other ancillary residential accommodation. To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and promote urban design concepts and linkages between town centre activity areas.'* Residential development is permitted in principle under this zoning objective.
- 8.2 Objective UD5 of the County Development Plan states that the settlements in Levels 4 (moderate growth towns) shall be prioritised for moderate growth and investment and shall absorb demand for new housing from inside and outside the County subject to the following controls:
- In any new multi-house development, a minimum of 20% of new houses shall be sold to persons that have been living and/or working in County Wicklow for at least 1 year. There are no restrictions on the remaining 80%.
  - Any new single house developments shall be restricted to those living and/or working in the County for 1 year.

## 9. NATIONAL GUIDELINES

### Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, December 2008

- 9.1 It is recommended in these Guidelines that new development should contribute to compact towns and villages and that walking and cycling should be preferred over travel by car for short trips. It is also highlighted that designs for backlands should seek to maximise permeability for pedestrian connectivity to existing streets.
- 9.2 In terms of layout and design considerations, it is stated that each residential scheme within a small town or village should make the most effective use of the site; make a positive contribution to its surroundings; have a sense of identity and place; provide for effective connectivity; and include a design approach.

### Design Manual for Roads and Streets, 2013

- 9.3 This Manual seeks to provide guidance on how to approach the design of urban streets in a more balanced way. It sets out an integrated approach to promote better street design by slowing traffic speeds and by encouraging

Careful place making, quality public realm and walking and cycling. The principles, approaches and standards set out in the Manual apply to the design of all urban roads and streets with a speed limit of 60 km/h or less.

## 10. ASSESSMENT

- 10.1 Permission was originally granted under Reg. Ref: 04/1538 (PL27.212815) in December 2005 for 119 residential units and a supermarket, cafe, 11 no. retail units, 2 no. offices, a crèche, group medical practice, nursing home, hotel and a gym on an overall site of 3.76 hectares within Newtownmountkennedy village centre. An amendments application under Reg. Ref: 06/6954 increased the number of permitted residential units on the site to 134 no.
- 10.2 Planning permission is now sought for the construction of 19 no. townhouses to complete the development of this mixed use town centre development. The appeal site comprises a 0.5 hectare portion of development lands situated in a backland/ infill location behind the retail/ commercial element of the scheme that is sited towards the main street. The site is bounded to the north by completed residential blocks; to the west by a residential block under construction; to the east by two blocks containing apartments and a medical centre; and to the south by the service/ access road off Main Street.
- 10.3 The parent permission included two blocks of development at the location of the appeal site intended for a nursing home, (2,666.8 sq.m) and apartments (7 no. units amended to 8 no. units). The appeal site was also to consist of open space, pedestrian routes and car parking to serve the wider development. The proposed development will therefore see the omission of these elements of the scheme to give a net increase of 11 no. residential units within the development.
- 10.4 Wicklow County Council has issued notification of decision to refuse permission for the proposed development for reasons relating to layout and design, the Council's local needs policy, and social and affordable housing. A first party appeal has been submitted on behalf of the applicant against the Council's decision. Having regard to the contents of the application, grounds of appeal, planning history and site context, I consider that this appeal should be assessed under the following:
- Development principle;
  - Design and layout;
  - Compliance with local needs criteria; and
  - Part V compliance.

Development principle

- 10.5 The appeal site and surrounding lands are zoned “TC: Town Centre - to provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic use, and to provide for ‘Living Over the Shop’ residential accommodation, or other ancillary residential accommodation. To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and promote urban design concepts and linkages between town centre activity areas.”
- 10.6 It is noted in the Local Area Plan that *‘it is important that town centres are inhabited, provide for a mix of uses and exhibit a high standard of urban design, in order to ensure vitality and viability.’* Nursing homes are permitted in principle under the town centre zoning objective and Objective NH2 of the County Development Plan states that *‘residential and day care facilities shall in general be required to locate in existing towns or villages and shall be located close to shops and other community facilities required by the occupants and shall be easily accessible to visitors, staff and servicing traffic.’*
- 10.7 The point is made in the Planner’s Report that the inappropriate development of town centre lands could have the effect of undermining the town centre by forcing certain land uses into surrounding suburbs. The appeal site is an appropriate location for a nursing home and would have improved the overall mix of uses at this location. There has been increased pressure for nursing home developments to take place on edge of town or out of town locations elsewhere in the country. The permitted facility would have been sited close to local amenities and where adequate pedestrian infrastructure was to be provided.
- 10.8 Notwithstanding the above, residential development is also permitted in principle under the zoning objective and the overall site is well provided for in terms of other town centre uses in proximity to the main street. The appeal site sits behind the main commercial and civic areas that attract town centre activity. The site will be surrounded by residential development on three sides and I would be satisfied that if an infill residential proposal was being assessed *de novo* at this location, it would be considered to be satisfactory. Furthermore, the proposal will help to consolidate and facilitate the development of the central area.
- 10.9 It is also a policy/ objective of the Local Area Plan that a range of unit types/ sizes shall be provided in larger developments. The existing dwelling units within the overall site comprise mostly of apartments and the proposed development will provide for larger sized housing units. I am therefore satisfied that the principle of replacing a nursing home with residential development is acceptable on these lands subject to the proposal being successfully integrated to its surroundings and the satisfactory provision of open space and pedestrian linkages serving the wider built environment. It should be noted that the zoning objective also seeks to identify, reinforce, strengthen and promote urban design concepts and linkages between town centre activity areas. These issues, together with the provision of public open space, shall be assessed in more detail below.

### Design and layout

- 10.10 Under the first reason for refusal, it is considered that the layout and design of the proposed development does not comply with the development standards for urban residential development set out in plans and guidelines. It is stated that the proposed scheme has not been effectively integrated with its surroundings; does not instil a sense of place; would result in the erosion of the public realm and a reduction in connectivity; and would be served by inadequate and poorly located open space and car parking.
- 10.11 Urban design standards contained within Section 5.4 of the County Development Plan consider the relationship of buildings to one another and to the spaces around them. It is stated that in core town centre areas, new development shall generally follow the pattern of development in the area having regard to building form, massing, height and design features. In particular, it is noted that *“new developments will require to be ‘integrated’ with the existing urban fabric, in the sense that it will knit together, both physically and visually with the surrounding buildings.”*
- 10.12 Clearly, the proposed development comprising of back-to-back suburban style housing contrasts with the surrounding layout of apartment block and duplex housing. As noted above, I have no objection in principle to the introduction of different housing types and I would consider that there may be benefits in terms of housing variety. However, it may become difficult to retrofit such a layout into an overall design concept which relies on communal open space, segregated parking and direct town centre linkages. Moreover, the appeal site was originally designed to contain a substantial area of open space to serve existing dwellings within and surrounding this space.
- 10.13 The proposed development takes a radically different approach by privatising much of the open space and visually closing off the new open space. There will be no visual connection to the proposed open space for the residents of Block D to the west of the site. It should be noted that this block was increased in size from 18 no. units to 32 no. units under a subsequent amendments application. Furthermore, there will be less permeability through the site for residents that will occupy this block.
- 10.14 I observed from my site visit that existing residents are afforded a good standard of residential amenity with low levels of car dominance, proximity to green space along the river valley and availability of town centre services and facilities. These residents could reasonably expect the implementation of the permitted communal area within the appeal site to serve their dwellings and further improve their residential amenity. In my opinion, the proposed development will see a reduction in the quality of public open space, as well as an increase in the number of dwellings that it will serve.
- 10.15 By way of comparison, the permitted open space forms a central element and focal point within the development. The area is overlooked by a large number of dwellings, which increases passive surveillance, and it is well defined as public space. Pedestrian desire lines have been fully considered and there is a good level of access throughout.

- 10.16 Conversely, the proposed dwellings relate poorly to the proposed open space. There is a lower level of passive surveillance and the dwellings that overlook the open space (Houses 16-19) are positioned such that they blur the distinction between public and semi-private space. The appearance is that the area to the front of these dwellings is inaccessible and this is exacerbated by boundary planting. I would also have concerns with the edges to the main area of open space to the north. The western edge comprises a pathway enclosed by rear boundary walls and hedgerow which may cause safety and security problems. The southern edge of this area is defined by the side boundary of House 16, which in my view is a less than satisfactory treatment. Some attempt has been made at reorienting the façade of House 16 towards the open space; however this compromises the design integrity of the dwelling. In this regard, it was noted in the Planner's Report that *'the design of the gable end is very poor and the removal of the front door and one of the first floor windows from the front elevation detracts from the design of the overall terrace.'* I would also be concerned with the appearance of the blank gable of House 1 at the entry point to the new development.
- 10.17 It is recommended in the 'Urban Design Manual: A best Practice Guide' that residential development proposals should create people friendly streets and places. There are elements of the existing development that are well designed in this regard. In particular, there are existing pathways surrounded by mature landscaping in an area to the north-east of the appeal site; however, it appears that this area will be altered as part of the open space proposals for the proposed development. I have mentioned above my concerns regarding the impacts on permeability of the proposal. I would also have concerns regarding the proposed pedestrian footpaths, particularly to the front of the west and south facing dwellings where there are pinch points of approximately 1.5m. The Design Manual for Urban Roads and Streets states that the minimum space for two people to pass comfortably in areas of low pedestrian activity is 1.8m.
- 10.18 Finally, the Planning Authority has concerns with regard to the location of car parking facilities relative to the proposed dwellings. The provision of communal parking can have advantages in that efficiency is maximised and visitors can be accommodated without the need for dedicated spaces. It is recommended in the Guidelines that car parking should be on-street or within easy reach of the home's front door and this would be the case for most of the proposed dwellings. The Guidelines also note that roads and parking should be considered as an integral landscaped element in the design of the public realm. I would have some concerns regarding the design of the access road along the southern and western side of the development. However, it should be noted that this road and associated parking remains largely unchanged from that which was permitted. There may be an opportunity, however, in any future redesign of the scheme to incorporate a more pedestrian friendly street layout.
- 10.19 Overall, I would share the Planning Authority's concerns regarding the layout and design of the scheme. I agree that the proposal fails to integrate with the existing layout. The proposed buildings and associated public open space

related poorly to the surroundings and indeed will result in the removal of an established and attractive area of open space worthy of preservation. I note that levels increase from this existing area of open space outside Building J up into the appeal site and no site sections have been submitted to illustrate this. I also concur with the Planning Authority that the proposed development will see the removal of permitted connections through the site, which are based on pedestrian design lines. In addition, I am in agreement that the proposal will result in an overall deterioration in the quality of public realm from the permitted scheme.

Compliance with local needs criteria

- 10.20 It is stated under the second reason for refusal that no evidence has been submitted with the planning application to show that the applicant is willing to restrict development in accordance with the Council's local needs policy. It is therefore considered that the development would materially contravene the Development Plan Settlement Strategy.
- 10.21 Objective UD5 of the County Development Plan states that the settlements in Levels 4 (moderate growth towns), such as Newtownmountkennedy, shall be prioritised for moderate growth and investment and shall absorb demand for new housing from inside and outside the County. It is a requirement that in any new multi-house development, a minimum of 20% of new houses shall be sold to persons that have been living and/or working in County Wicklow for at least 1 year. There are no restrictions on the remaining 80%.
- 10.22 In response to this reason for refusal, the applicant states that there is no issue in regard to complying with the Wicklow Settlement Strategy. There is no comment within the Planner's Report or the Planning Authority's response to the first party appeal on this matter.
- 10.23 The parent permission granted under Reg. Ref: 04/1538 included a condition to ensure that residential units are suitably restricted to meet local growth needs. It was a requirement that 50% of residential units shall be restricted to persons resident/ working in the County for at least one year. Details of the units sold under this restriction were to be submitted to the Planning Authority, and with confirmation from a solicitor with professional indemnity insurance.
- 10.24 Notwithstanding the fact that the parent permission would have been granted under a previous Development Plan, I consider that a similarly worded condition can be attached if the Board is minded to grant permission for the development, which stipulates the restrictions of Objective UD5 of the current Development Plan.

Part V Compliance

- 10.25 Under the final reason for refusal, it is considered that the failure of the developer to clearly specify in the application how it is intended to comply with Section 96 of Part V of the Planning and Development Act is contrary to Development Plan policy and current legislation.

- 10.26 It is a requirement under Development Plan policy HS6 that a 20% quota of social / affordable housing shall be provided for in all new residential or mixed use developments on zoned land through the transfer of either (a) 20% of the land of the site, or (b) housing units, where the total value of the planning gain of the unserviced site(s) of such units is equivalent in monetary value to the planning gain to the Council on the transfer of 20% of the land of the site, or (c) fully or partially serviced housing sites where the total planning gain for the unserviced element of such sites are equivalent in monetary value to the planning gain on 20% of the land of the site, or (d) a payment of such an amount, which is equivalent to the monetary value of the amount accruing to the Planning Authority, under the provisions of a, b or c above, or (e) the provision of (a), (b), (c) or (d) above at another area within Wicklow.
- 10.27 The appellant states in response to this reason for refusal that the provision of social and affordable housing for the entire site has already been agreed with the Council, including that for the 8 no. permitted apartments on site, and that the additional 11 no. houses may have a requirement for 2 no. units which can be made available by way of condition.
- 10.28 In response to the first party appeal, the Planning Authority refers to Article 22(2)(e) of the Planning and Development Regulations (as amended), which states that *'a planning application referred to in sub-article shall be accompanied by in the case of an application for permission for the development of houses or of houses and other development, to which section 96 of the Act applies, proposals as to how the applicant proposes to comply with a condition referred to in sub-section (2) of that section to which the permission, if granted, would be subject'*.
- 10.29 The Planning Authority states that the applicant's failure to submit such proposals should have resulted in the application being invalidated. The reason for refusal was attached to the decision to highlight to the applicant the importance of compliance with Part V in respect of this application, and in the case of any future housing applications.
- 10.30 In normal circumstances, the issue of validation of a planning application is a matter for the validation section of the Planning Authority. In this case, I consider that if the Board is minded to grant permission for the proposed development, a condition can be attached requiring the applicant to enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 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, prior to commencement of development.

## **RECOMMENDATION**

Having considered the contents of the application, the provisions of the current Wicklow County Development Plan and the Newtownmountkennedy Local Area Plan, together with the grounds of appeal, planning history and my assessment of the planning issues, I recommend that permission for the proposed development be refused for the reasons and considerations set out hereunder:

## **REASONS AND CONSIDERATIONS**

Having regard to the design and layout of the development, including the proposed arrangement of suburban style housing with associated private open space in a town centre location; the poor levels of permeability and pedestrian facilities throughout the site; and the substandard quality of public open spaces, it is considered that the proposed development would allow for the development of a low standard residential environment, of poor design quality that fails to both physically and visually integrate with the established urban fabric. The proposed development would, therefore, seriously injure the amenities of existing and future residents of the scheme and would be contrary to the proper planning and sustainable development of the area.

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**Donal Donnelly**  
**Inspector**

3<sup>rd</sup> October 2014