



An
Bord
Pleanála

Inspector's Report

ABP-307397-20

Development	Construction/erection of 11 residential units. The granting of planning permission for the demolition of the existing single storey house on site was granted on planning permission register reference 18/727.
Location	Four Seasons, Greenhills, Kill,Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	19967
Applicant(s)	Glengolden Builders Limited
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Glengolden Builders Limited.
Observer(s)	none
Date of Site Inspection	31 st August, 2020

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located at the southern end of Kill village on what was the old N7 road and is now the local road that connects Kill and Johnstown. The site is triangular in shape and there is a single storey house located in the centre of the plot. This building is in a poor state of repair and at the time of inspection appeared to be unoccupied. The site is densely vegetated and overgrown in parts, particularly to the rear of the site, with many mature trees and plants including beach and ash trees.
- 1.2. The N7 runs to the north west of the site and the carriageway is approximately 30 metres from the site boundary at the closest point. The north west boundary of the site is characterised by a drainage ditch and there is significant existing planting along the strip to the north of the site between the site and the M7. This planting is in two parts divided by an access track that runs parallel with the motorway and the site boundary.
- 1.3. To the east, the site is bounded by two existing single storey houses. There is a residential development of two storey houses (Saddlers Hall) located to the south east on the opposite side of the road. Opposite the appeal site is Kill GAA club and pitch.
- 1.4. The stated area of the site is 0.357 ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the demolition of an existing single storey house on the site and the construction of a residential development of 11 no. two storey houses.
- 2.2. The proposed mix of units comprises 6 no. two bedroom houses and 5 no. three bed units. The units are proposed to be laid out with the rear gardens facing the north-west and north-east site boundaries. The stated gross floor area of the 11 no. units is 1,153 sq. metres with the floor area of the proposed units ranging between 89.6 and 117.6 sq. metres. Finishes are proposed to comprise a mixture of brick and render with pitched slate or tiled roofs.

- 2.3. A vehicular entrance is proposed in the southern boundary to the local road and the submitted layout indicates a total of 22 parking spaces. Public open space is proposed to be provided in the vicinity of the site access and at the eastern and western corners of the site. Private amenity space in the form of rear gardens are proposed for each unit and areas of these spaces varies between c.56 and 125 sq. metres.
- 2.4. The development is proposed to be connected to the public water supply and drainage networks and surface water is proposed to be disposed of to soakaways on site.
- 2.5. Proposals for compliance with Part V social housing are included with the application and comprises one terraced two bedroom unit.

3.0 Planning Authority Decision

3.1. Further Information

Prior to the issuing of a Notification of decision, the Planning Authority issued a request for further information which included the following items / issues:

- Justification for the scale and layout of development proposed given the surrounding low density of development and the zoning of the site.
- Concern regarding over development of the site and sub standard public open space.
- Submission of a revised landscaping scheme.
- Revised design of units to prevent overlooking and to supervise open space areas.
- Prescribed revisions to roads layout and details of roads and footpaths.
- Submission of an Acoustic Design Statement.

The following is a summary of the main information and amendments submitted in response to the request for further information:

- Submission of a zoning map that indicates the site as within 400 metres of the town centre and located such that the proposed density is acceptable. Precedent in terms of permitted density in the general area is also highlighted.
- That there is no direct overlooking between units or out of the development. Some revisions to the siting and design of Units 9-11 undertaken.
- That the development meets all development plan standards with regard to house design / size and private and public amenity space.
- That many of the trees on the approach to the site are outside the site boundary. The majority of the trees to be removed are leylandii species.
- That all trees in the surface water attenuation areas will be removed and barriers will be installed to prevent new trees interfering with the drainage infrastructure.
- That proposals for the drainage ditch to the rear have not been determined, however a condition regarding this feature could be attached to any grant of permission.
- That a block wall along the boundary with the two objectors to the east is now proposed.
- Details of pedestrian and road / footpath design as requested submitted.
- Noise Impact Assessment report submitted.

3.2. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission for two reasons which can be summarised as follows:

1. That notwithstanding the proposed noise mitigation measures in the design, the proximity of the development to the N7 is such that there would be unacceptably high noise levels at the facades of the units, in particular Nos.1-8. The proposed development would therefore result in a sub standard form of residential amenity and would be contrary to Objective EN4 of the Kildare County Development plan and the Kildare County Council Noise Action Plan.

2. That the proposed residential layout of two perpendicular residential blocks is considered to be sub optimal in terms of residential amenity and streetscape and an inappropriate form of residential development on this visually prominent site on the approach to Kill town centre.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The initial report of the planning officer notes the planning history, site context and internal reports on file. The principle of demolition and infill development on the site is accepted in principle and the density proposed at c.30.8 units per ha. is considered appropriate and in line with development plan requirements, however some concern regarding the scale relative to the low density to the north of the public road is expressed as well as regarding the layout of public open space. A maximum of 8 no. units is stated to be more appropriate. A number of issues are considered to require further information including justification for the scale / density of development, internal layout and separation distances, surface water attenuation and trees detailed requirements for the internal road layout and access, and the submission of an Acoustic Design Statement. A second report subsequent to the submission of further information recommends refusal of permission for reasons consistent with the notification of decision which issued.

3.3.2. Other Technical Reports

Area Engineer – Initial report refers to road design section recommendation for further information. Second report subsequent to receipt of further information recommends refusal as per Road Design issues.

Transportation Department – Initial report recommends further information including relating to footpath layout and a traffic noise assessment. Second report subsequent to the submission of further information recommends refusal of permission

Fire Officer – No objection subject to conditions.

Housing Department – Further information on part V housing and compliance with development plan requirements (particularly storage) required.

Environment Section – No objection subject to conditions.

Kildare National Road Design Office - No objection subject to a Noise Assessment Report being prepared which indicates that there would not be a significant negative impact on residential amenity.

Water Services Section – No objection subject to conditions.

Heritage Officer – No objections.

3.4. **Prescribed Bodies**

Irish Water – No objection.

Transport Infrastructure Ireland – No objection subject to the authority accepting no future claims in respect of impacts arising from the presence of the existing road or any new road scheme which is currently in planning.

3.5. **Third Party Observations**

The following issues are raised in the third party observations received by the Planning Authority:

- That all screen walls / boundary walls with third party properties should comprise solid block walls of minimum 2 metres in height.
- Demolition of habitable house not justified,
- Houses excessively close to the M7/N7 motorway with impacts on amenity and health.
- Development requires removal of trees and negative impact on biodiversity.
- Restricted visibility at the site entrance and creation of a traffic hazard.
- Inadequate space for turning within the site.

4.0 **Planning History**

The following planning history is noted and considered of relevance to the assessment:

Appeal Site

Kildare Co. Co. Ref. 18/727 – Permission granted for the demolition of the existing house on the site and the construction of 4 no. two storey houses, relocation of the site entrance and associated site works.

Kildare Co. Co. Ref. 12/934 – Permission granted for extension of duration of permission Ref. 08/307.

Kildare Co. Co. Ref. 08/307 – Permission granted for the demolition of the existing house on the site and the construction of 4 no. two storey houses, one domestic garage, relocation of the site entrance and associated site works.

5.0 Policy Context

5.1. Development Plan

Kill is identified as a small town in the Kildare County Development Plan and a small town plan is set out in Volume 2 of the County Development Plan. The site is zoned Objective B (Existing Residential / Infill) under the provisions of the Plan with a stated objective as follows *‘to protect and improve existing residential amenity, to provide for appropriate infill residential developments and to provide for new and improved ancillary services’*.

Policy KL1 states that it is policy to *‘facilitate the development of residential developments over the lifetime of the plan, largely within the town centre zone on areas designated as existing residential / infill and on lands zoned new residential, in accordance with the principles of proper planning and sustainable development’*.

Objective EN4 states that it is an objective of the council to *‘Facilitate the implementation of the Kildare Noise Action Plan 2013-2018 and Litter Management Plan 2016-2019 and any subsequent amendments during the period of this Plan.’*

Paragraph 7.6.4 of the Plan states that *‘The Kildare Noise Action Plan (2013) seeks to avoid, prevent and reduce where necessary the harmful effects of long term exposure to environmental noise. All proposed development will be in accordance with the EU Ambient Air Quality and Cleaner Air for Europe (CAFÉ) Directive (2008/50/EC).’*

The ***Kildare Noise Action Plan*** seeks to avoid, prevent and reduce on a prioritised basis, where necessary, the harmful effects due to long term exposure to environmental noise. Noise sensitive sources identified include residential properties and the noise generated by roads is mapped.

Residential standards are set out at Chapter 17 of the *Kildare County Development Plan, 2017-2023*.

5.2. Natural Heritage Designations

The site is not located in or close to any European site. The closest such site is Red Bog SA which is located c. 6.5 km to the south east of the site.

5.3. EIA Screening

Having regard to the location and scale of the development proposed including the fact that it is proposed to be connected to the public water supply and drainage networks, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the first party grounds of appeal:

- That there have been a number of other residential developments permitted in the Kill area in recent times with densities of 25-35 units per ha. the density of development in the current proposal is consistent with this range at 31 per ha.
- That the appeal site is on lands that are zoned for residential / infill development and where Policy KL1 is also applicable.
- That the proposal is consistent with Table 4.2 of the development plan being a site within 400 metres of the town centre.

- That site coverage (17.5%) and plot ratio (0.32) are acceptable.
- That there would be no overlooking or overshadowing of adjoining properties.
- That the layout has been designed to meet the requirements of DMURS.
- That the houses are in accordance with the standards set out in Table 17.4. private amenity space.
- That the concrete boundary walls will protect the amenity of adjoining houses and the proposed houses from noise.
- That a total of 15 percent of public open space is provided and above the 10 percent development plan standard.
- Adequate sight lines are proposed at the site entrance.
- That the principle of residential development is acceptable in this location and it is submitted that the design is extremely well designed.
- That there is a precedent for housing on this site and three of the previously permitted houses under Ref. 18/727 are in very similar position to Nos. 1-8 in the current proposal.
- That the Transportation department did not raise any concerns regarding noise in the case of Ref. 18/727.
- It is not clear how the proposed noise mitigation measures could not be considered likely to reduce the day and night noise levels below the thresholds set out in the Third Noise Action Plan, 2019-2023.
- A new noise assessment is presented which shows significant exceedance of the 60dB threshold during night hours with the result that the site should not be seen as a negligible risk as per the Professional Guidance on Planning Noise document produced in May 2017 by Noise and environmental health bodies.
- That there are no statutory noise limits in relation to dwellings.
- That calculations show that the internal noise levels in the proposed dwellings are within acceptable limits, albeit with specialised glass fitted. With partially open windows the internal noise level would be above the recommended

night time levels / bedroom level and reliance cannot therefore be placed on natural ventilation for the rear bedrooms units.

- A noise barrier is required to mitigate the impact of noise on private amenity areas.
- That the public open spaces are passively supervised and are screened from the road by planting. It is noted that the previous permission on the site was granted with no public open space provision.

6.2. Planning Authority Response

The following is a summary of the main issues raised in the response to the grounds of appeal received from the Planning Authority:

- That the applicant was advised at further information stage that the planning authority had concerns regarding the form of the development.
- That the proposal was considered on its own merits and not having specific comparison with what was previously permitted on the site.
- That the reference to 2.1 metre boundary and trees as part of noise attenuation measures is noted however the trees are not considered to result in any significant attenuation impact.
- The revised noise assessment is noted, however the inability to open a window at first floor level along the north western boundary is a serious issue and concern for the planning authority.

7.0 Assessment

7.1. The following are considered to be the main issue in the assessment of this case:

- Principle of Development
- Design and Layout
- Impact on Amenity

- Other Issues
- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. Kill is identified as a small town in the Kildare County Development Plan and a small town plan is set out in Volume 2 of the County Development Plan. The site is **zoned** Objective B (Existing Residential / Infill) under the provisions of this Plan with a stated objective '*to protect and improve existing residential amenity, to provide for appropriate infill residential developments and to provide for new and improved ancillary services*'. The principle of an infill residential development on the site is therefore considered to be acceptable.
- 7.2.2. The existing house on the site is currently unoccupied and is in a poor state of repair. The building is not of any evident architectural or other significance and I do not therefore have any objection to the principle of **demolition** of this structure to facilitate new development.
- 7.2.3. The appeal site comprises an established residential location that is located in the transition between the edge of centre and outer village areas as per the descriptions cited in the Sustainable Residential development Guidelines for Planning Authorities. The principle of infill residential development and consolidation of the existing zoned and serviced area is consistent with the principles set out in national and local policy regarding urban consolidation and densification. It is also considered to be consistent with **Policy KL1** of the Kill Town Plan which states that it is policy to '*facilitate the development of residential developments over the lifetime of the plan, largely within the town centre zone on areas designated as existing residential / infill and on lands zoned new residential, in accordance with the principles of proper planning and sustainable development*'.
- 7.2.4. With regard to the **density** of residential development on the site, the proposed development equates to a density of c.30.8 units per hectare. This density is at the upper end of the 20-35 dwellings per hectare range cited in Paragraph 6.11 of the Sustainable Residential Development in Urban Areas Guidelines (and also in Table 4.1 of the Kildare County Development Plan) as being appropriate in the transitional

areas such as that of the appeal site located between edge of centre locations and the outer areas. I note the discussion contained in the report of the Planning Officer, the request for further information and subsequent response regarding whether the site could be considered as an edge of centre location as per the Guidelines. As highlighted by the Planning Officer, the location of the site between the road and the motorway contains the older areas of the village and is characterised by a generally lower density of development than newer development areas to the south. It is also noted that the location of the site is such that it is essentially at the edge of the existing developed area in this part of the village. Given these factors, it is my opinion that a redevelopment density at the lower end of the 20-35 units per ha. range specified in the Guidelines for transitional areas is appropriate.

7.3. Design and Layout

- 7.3.1. The Planning Authority raised a number of concerns with regard to the design and layout of the proposed development during the course of the assessment of the application, including issues regarding the layout of the units being arranged around the site boundaries and relating to the location of the public open space areas. Concerns regarding the amenity and visual impact of the proposed layout forms the basis for Reason for Refusal No.2 as included by the Planning Authority.
- 7.3.2. I note the comment made by the first party appellant that the previous permission for the redevelopment of the site (Ref. 18/727) comprises a similar basic layout to that currently proposed, with houses backing onto the north west boundary. This is correct, however the extant permission on the site is for a development of 4 no. houses and therefore significantly less dense than the current proposal.
- 7.3.3. I note the layout of the proposed public open space areas which comprises a small area in the vicinity of the site access and two roughly triangular shaped areas at the far eastern and western corners of the site. This open space provision was one of the issues raised in the request for further information issued by the Planning Authority and, notwithstanding the amendments to the design of the units in closest proximity to these spaces, I consider that these corner areas of open space are too far removed from the main body of the site and such that they would be poorly utilised and generate a poor standard of residential amenity. I note the comment of

the first party that the previous permission on the site was granted with no public open space provision. This is correct, however the number of units was much smaller at 4 no. units and the individual houses and private amenity spaces significantly larger than that proposed in the subject application.

- 7.3.4. Regarding the basic layout, I agree with the assessment of the Planning Authority that the layout would not result in a development that would have a high level of visual amenity when viewed from the road. The site is a visually prominent one located on the approach to Kill from the Johnstown side, and is proposed to be opened up with the removal of the existing roadside vegetation. The form of development proposed with 11 no. units and an extensive parking and circulation area to the front of the units would in my opinion constitute a visually obtrusive and inappropriate form of development in this location. Again, while the extant permission on the site (Ref. 18/727) incorporates a layout that is generally similar to that currently proposed, it is for a much smaller number of units with larger individual sites and a significantly smaller circulation and access area. The form and scale of the permitted development would, in my opinion therefore have significantly less visual impact than the current proposal and be more in keeping with the existing character of the area and scale of development on surrounding sites. Were an increased density of development over that permitted under Ref. 18/727 to be sought it is considered that a form of development that fronted onto the road would be more appropriate.
- 7.3.5. With the exception of the sizing of internal storage areas within a number of the units, the scale of the individual dwellings proposed are generally consistent with the requirements set out in Chapter 17 of the County development Plan and with the standards set out in Quality Housing for Sustainable Communities. Private amenity space areas to serve the houses are also consistent with development plan requirements. Parking within the development at a rate of 2 no. spaces per residential unit is proposed and is considered to be acceptable.

7.4. Impact on Amenity

- 7.4.1. On foot of the request for further information, the first party revised the boundary proposed on the north eastern side of the site with a block boundary wall proposed. The separation distance between the first floor of the units that back onto this boundary and the proposed boundary wall is c.9.5 metres and the separation distances to the houses to the east is c.35 metres at the closest point. No overlooking or significant impact on the residential amenity of these adjoining properties is therefore considered likely to arise.
- 7.4.2. Within the proposed layout, on foot of concerns raised in the request for further information, some revisions to the siting and design of Units 9-11 was undertaken. The revised layout is such that I do not consider that the proposed layout would impact negatively on residential amenity within the development.
- 7.4.3. The issue of **noise** generated by the adjacent N7 and the potential impact on residential amenity was raised in a number of the internal and external reports on file (Transportation and Road Design Departments and TII) and was one of the items included in the request for further information. On foot of this request, a Noise Impact Assessment report was submitted to the Planning Authority. This study identified that the average day and night time noise levels at a distance of c.65 metres from the carriageway are 68dB(A) and 61 dB(A) respectively and therefore very significantly in excess of the 30dB(A) Leq level that is recommended by the WHO for bedrooms and sleep. The report notes (Section 12.0) that reliance cannot therefore be placed on natural ventilation in the rear facades of the houses closest to the road (Nos. 1-8) and that the use of louvres and an acoustic air vent would be required. The report states that this ventilation arrangement is not ideal but may be acceptable given the convenient location of the development.
- 7.4.4. I note the very significant degree by which the recorded noise levels exceed WHO recognised standards and also the fact that the recorded noise levels are in slight excess of the levels set out in the Kildare County Council Noise Action Plan. While it may be possible that some additional noise mitigation at the site in the form of a noise barrier along the north west boundary of the site may reduce the night time noise level in particular below the threshold set out in the Noise Action Plan, this standard is high at 57dB(A). In addition, I note that the noise figures cited in the

initial noise report submitted with the application are based on a separation distance from the carriageway of 65 metres when the rear elevation of Nos.1-8 would appear to be more like 45 metres from the near edge of the west bound carriageway of the N7. It is also noted that while there is reference to a noise barrier along the north west boundary of the site it is not clear what additional attenuation such a barrier would provide given that there is already a roadside noise barrier and extensive vegetation between the appeal site and the road.

- 7.4.5. With reference to the thresholds set out in the *Third Noise Action Plan, 2019-2023*, as highlighted by the first party in their appeal there is no statutory noise limits with regard to dwellings. This is correct, and I therefore consider that the consideration of this issue is primarily one of general amenity. A detailed new noise assessment is submitted by the first party as part of the appeal which makes specific reference to the Professional Guidance on Planning Noise document produced in May 2017 by Noise and Environmental health bodies. This report contends that given the significant exceedance of the 60dB threshold during night hours, the site should not be seen as a negligible risk as per the Guidance. The report also states that with partially open windows the internal noise level would be above the recommended night time levels / bedroom level and reliance cannot therefore be placed on natural ventilation for the rear bedrooms units.
- 7.4.6. The content of this assessment is noted, however the fact remains that dwellings on the site, and particularly those indicated at Nos.1-8 on the proposed layout will be the subject of very significant noise levels that will have a negative impact on residential amenity in terms of the use of the private amenity spaces serving these dwellings and also require the fitting of specialised glazing and mechanical ventilation to provide a night time environment that would be within acceptable limits for sleeping. This is not in my opinion a viable layout to provide an adequate level of residential amenity to future occupants of the proposed development.
- 7.4.7. I note reference by the first party to the fact that permission was granted under Ref. 18/727 for 4 no. units on the site and that this was not the subject of a Noise Assessment. These houses are, however located further from the site boundary and from the N7, and would therefore result in fewer units being impacted by the noise from the road.

7.5. Other Issues

- 7.5.1. Sightlines at the proposed access to the site are indicated at 50 metres in both directions, and are acceptable and in accordance with the requirements set out in DMURS.
- 7.5.2. The development is proposed to be connected to the public water supply and drainage networks and there are reports on file from both Irish Water and the water Services Section of the council stating that there is no objection to the proposed development. Subject to a condition requiring the applicant to enter into a connection agreement with Irish Water the proposed development is considered to be acceptable.
- 7.5.3. I note that the Housing Department highlight that the internal storage areas in the units proposed for transfer to the local authority (two bedroom terraced units) would require amendment to meet the development plan requirements.

7.6. Appropriate Assessment

- 7.6.1. The site is not located in or close to any European site. The closest such site is Red Bog SAC which is located c. 6.5 km to the south east of the site. Having regard to the nature and scale of the proposed development including the proposed connection to the public water supply and drainage networks, and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. Having regard to the proximity of the proposed development (in particular units Nos.1-8) to the N7 national primary road, to the existing noise environment at the site arising from the proximity to the N7 and to the requirement that windows to habitable bedrooms would have to remain closed to meet normally accepted noise levels for bedroom accommodation, it is considered that, notwithstanding the proposed noise mitigation measures in the design, the environment would have a serious negative impact on the use of the private amenity areas and internal living accommodation in Units Nos. 1-8. The proposed development would therefore result in a sub standard form of residential development that would seriously injure the amenity of future occupants of the development and would be contrary to the proper planning and sustainable development of the area.
2. That the proposed residential layout incorporating two perpendicular residential blocks with a large area of circulation and parking to the front and areas of public open space that are separated from the majority of the site and units in the development would result in a visually incongruous and inappropriate form of residential development on this visually prominent site on the approach to Kill town centre and would result in a poor standard of residential amenity for future occupants of the development. The proposed development would therefore seriously injure the residential amenities of future occupants, would be injurious to the visual amenities of the area and contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

17th September, 2020