



Planning and Development Acts 2000 to 2017

Planning Authority: Kildare County Council

Planning Register Reference Number: 16/975

Appeal by James Kelly care of David Higgins of Clownings, Newbridge, County Kildare and by Tom O'Brien, Appointed Receiver over Specified Assets of Declan Gardiner (in Receivership) care of Bilfinger GVA Planning and Regeneration Limited of 2nd Floor Seagrave House, 19-20 Earlsfort Terrace, Dublin and by others against the decision made on the 2nd day of August, 2017 by Kildare County Council to grant subject to conditions a permission to the said Tom O'Brien, Appointed Receiver over Specified Assets of Declan Gardiner (in Receivership) in accordance with plans and particulars lodged with the said Council:

Proposed Development: Permission is sought for a period of seven number years to allow for development on a phased basis comprising construction of 385 number dwellings and associated car parking (327 number two-storey three/four bed houses; 48 number three-storey duplexes consisting of 24 number one and two bed apartments and 24 number two and three bed units, six number two-storey two bed townhouses and four number three-storey three bed townhouses) totalling 44,473 square metres gross floor area. The proposed development also includes one number two-storey crèche building (541 square metres) and associated parking, 19,449 square metres of public open space, associated internal road network, public lighting, surface water attenuation, landscaping and all associated site

clearance/demolition and site development works and connections to site services. The site measures approximately 13.1 hectares (12.8 hectares developable area) and is bounded by Sexes Road to the south; "Roseberry Hill" to the south-east; Mooney's Road to the north; Rickardstown House to the north-west; and Station Road to the west. The application site is proposed to be accessed from Station Road and via Roseberry Hill.

The proposed development was revised by further information received by the planning authority on the 1st day of June, 2017 including a reduction in the number of proposed dwellings from 385 number to 364 number, the removal of all duplex/apartment units and replacement with houses, revisions to overall layout, house types, design and mix including an increase in the number of two bedroom houses, increase in the amount and design of open space, alterations to boundary treatments, road improvements including changes to road design, changes to car parking, relocation and redesign of proposed crèche and revised landscaping. The revised scheme retains the proposed northern portion of the site and the proposed access onto Station Road.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to –

- the location of the subject site within the Newbridge Local Area Plan boundary and on lands zoned “C7, C8 and C9 - New Residential” in the Newbridge Local Area Plan 2013-2019,
- the Kildare County Development Plan 2017–2023,
- the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, issued by the Department of the Environment, Heritage and Local Government in May 2009,
- the Design Manual for Urban Roads and Streets (DMURS), issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013,
- the nature, scale and design of the proposed development,
- the availability in the area of a wide range of social infrastructure, and
- the pattern of existing and permitted development in the area,

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not lead to a risk of flooding, would respect the existing character of the area and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Environmental Impact Assessment

The Board completed an Environmental Impact Assessment of the proposed development, taking into account:

- the nature, scale, extent and location of the proposed development,
- the Environmental Impact Statement submitted with the application,
- the documents on file including the submissions from the planning authority and from the parties and observer lodged in the course of the application, and appeal, and
- the Inspector's report.

The Board considered that the Environmental Impact Statement identifies and describes adequately the direct, indirect and cumulative effects of the proposed development on the environment. The Board completed an Environmental Impact Assessment in relation to the subject development, by itself and in combination with other development in the vicinity, and agreed with the Inspector in her assessment of the likely significant effects of the development, and agreed with her conclusions on the acceptability of the mitigation measures proposed. The Board concluded that, subject to the implementation of the mitigation measures proposed, and subject to the following conditions, the effects of the proposed development on the environment would be acceptable. In doing so, the Board adopted the report of the Inspector.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 1st day of June 2017, 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. The period during which the development hereby permitted may be carried out shall be seven years from the date of this order.

Reason: The Board considers it appropriate to specify a period of validity of this permission in excess of five years, having regard to the scale of the development.

3. No development authorised by this permission shall take place until the contract for the Newbridge Eastern Interceptor Sewer (ULVRSS Contract 2A) has been entered into, and the developer has been formally notified in writing of this fact by the planning authority. No houses in the development shall be made available by the developer for occupation until such time as the Newbridge Eastern Interceptor Sewer has been commissioned and is in operation, to the written satisfaction of the planning authority, and the developer has been notified in writing of this by the planning authority.

Reason: To ensure that adequate sewerage infrastructure is available to accommodate the proposed development.

4. The mitigation measures and commitments identified in the Environmental Impact Statement, and other plans and particulars submitted with the planning application, shall be implemented in full by the developer, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.

5. The proposed development shall be amended as follows:
 - (a) House number 306 shall be omitted and the resultant area included within the public open space of the estate, to link up with the public open space to the south in the adjoining development. House number 305 shall be changed to a B2 type house to provide for passive surveillance of this open space.
 - (b) Houses numbers 87 and 88 shall be omitted and the resultant area shall be used to increase the play area serving the crèche. The play area shall be bounded on all sides, including the side boundary of the garden of house number 89, by concrete block walls, two metres in height, which shall be rendered on both sides and capped.
 - (c) Two pedestrian/cyclist accesses, in addition to the proposed vehicular access, shall be provided from the development onto Sexes Road at locations to be agreed in writing with the planning authority.
 - (d) The developer shall construct a pedestrian/cyclist access between the development and Roseberry Hill, running from the front of house number 196 into Roseberry Hill (shown as “possible cycle/pedestrian permeable link to development lands adjacent” on drawing number 1669_PI_P_03_IFP, submitted to the planning authority on the 1st day of June 2017).

- (e) The rear gardens of house types C and D shall be redesigned to provide more uniform shaped gardens.
- (f) The north-west façade of the crèche shall be revised to provide for a more aesthetically interesting façade through the use of a mix of materials or additional windows.
- (g) Parking shall be indicated for unit number 168.
- (h) The front building line of house number 183 shall be stepped or brought forward to prevent overlooking into the rear living area of house number 184.
- (i) All staircase/landing windows, and all windows serving bathrooms, w.c.'s and en-suites shall be provided with opaque or frosted glazing, which shall be permanently maintained.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

- 6. (a) The development may be carried out as a single operation, or may be phased. If phased, the development shall be carried out on a phased basis in accordance with the phasing programme submitted to the planning authority on the 1st day of June 2017. The first phase shall consist of not more than 93 dwelling units, together with their associated site development works (including public open space and public lighting).

- (b) Work on any subsequent phases shall not commence until such time as the written consent of the planning authority is given to commence the next phase. Details of further phases shall be submitted to and agreed in writing with the planning authority in advance of the commencement of construction works for that phase.

- (d) The proposed crèche shall be completed and made available for use prior to the making available by the developer for occupation of any house within phase 2 of the development, or as otherwise agreed, prior to commencement of development of phase 2, in writing with the planning authority.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed houses, and in order to prevent pollution.

- 7. Details of the materials, colours and textures of all the external finishes and boundary treatments to the proposed houses shall be submitted to, and agreed in writing with the planning authority prior to commencement of each phase of development. Roof colours shall be blue-black or slate grey only (including ridge tiles). External materials, other than roofs, shall provide for the development of individual character areas, as indicated in submitted documentation. White uPVC shall not be used for windows, external doors and rainwater goods.

Reason: In the interest of visual amenity, and to ensure that the proposed development integrates into the pattern of development in the area.

8. (a) Detailed plans and elevations of the proposed landscaping and boundary treatment to be provided along the boundary of Station Road, Sexes Road, and with the adjacent farmyard and farmland shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.
- (b) With the exception of the boundary referred to in condition number 8 (c) below, all rear gardens shall be bounded, on both sides and to the rear, with concrete block walls, which shall be a minimum of 1.8 metres high, and shall be suitably capped and rendered on both sides, except where bounding public open spaces or roads, when the walls shall be two metres in height. The proposed concrete post and timber fencing shall not be used.
- (c) The existing hedgerow boundary along the eastern edge of Phase 2, where it adjoins the rear gardens of Roseberry Hill, shall be retained and the proposed concrete post and timber fencing indicated on submitted drawings adjoining this hedgerow shall be provided. The alternative paladin fencing along this boundary shall not be used.

Reason: In the interest of visual amenity, in order to ensure the provision of durable boundary treatment in the interest of residential amenity, and to protect the adjacent hedgerow boundary in accordance with the provisions of the Local Area Plan.

9. The development hereby permitted shall be carried out in accordance with the standards and requirements of the planning authority for taking in charge. The development shall be maintained by the developer until taken in charge by the authority and shall not be operated or maintained by a private management company.

Reason: In order to comply with national policy in relation to the maintenance and management of residential estates, and to ensure that the development, when completed, can be taken in charge by the planning authority.

10. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works, who shall supervise all works relating to the tree protection and open space works on the overall site. The developer's Landscape Architect shall certify to the planning authority by letter his/her opinion on compliance of the completed landscape scheme with the approved landscape proposal within six months of substantial completion of the development hereby permitted.

Reason: In the interest of ensuring the proper and timely completion of the landscaping works.

11. The areas of open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the landscaping proposals received by the planning authority on the 14th day of September 2016 and the 1st day of June 2017, and the detailed requirements of the planning authority. This work shall be completed before any of the houses hereby permitted are made available for occupation, or, if the development is phased, before the commencement of the subsequent phase of construction and in the case of the final phase before any of the houses in that phase are made available for occupation. If any tree or plant dies or is otherwise lost within a period of five years, it shall be replaced by a plant of the same species, variety and size within the first planting season following such loss.

The open spaces shall be maintained as public open space by the developer until taken in charge by the local authority. When the estate is taken in charge, the open spaces shall be vested in the planning authority, at no cost to the authority, as public open space.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

12. The development shall be carried out under the supervision of a suitably qualified ecologist appointed by the developer.

Reason: To protect the natural heritage of the area.

13. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –
 - (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
 - (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
 - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection (in situ or by record) of any remains that may exist within the site.

14. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities within each house plot shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.
- (b) For the terraced houses, this plan shall provide for screened bin stores, which shall accommodate not less than three standard-sized wheeled bins within the curtilage of each house plot.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

15. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes and through open spaces, details of which (for the entire site) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development. Such lighting shall be provided prior to the making available for occupation of any house, or, in the event that the development is phased, prior to the making available for occupation of any house within that phase.

Reason: In the interest of amenity and public safety.

16. 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. All existing overhead cables crossing or bounding the site shall be undergrounded, at the developer's expense, as part of the site development works.

Reason: In the interests of visual and residential amenity.

17. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

18. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility.

19. (a) The roads and traffic arrangements serving the site (including internal and external signage) shall be in accordance with the detailed requirements of the planning authority for such works and shall be carried out at the developer's expense. Details in this regard, including detailed design of the proposed footpaths and cycle tracks on Station Road and Sexes Road and the tie-in with the existing infrastructure, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) Footpaths shall be dished at road junctions in accordance with the requirements of the planning authority. Details of the locations and materials to be used in such dishing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (c) The internal road network to serve the proposed development (including junctions, parking areas, footpaths and kerbs) shall comply with the detailed standards of the planning authority for such road works, and shall comply in all respects with the Design Manual for Urban Roads and Streets (DMURS), issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013,
- (d) The materials used, including tactile paving, in any roads/footpaths provided by the developer shall comply with the detailed standards of the planning authority for such road works.

- (e) The developer shall provide a toucan or pedestrian light-controlled pedestrian crossing opposite Sarsfield GAA Club, three number toucan pedestrian crossings at the entrance roundabout to Roseberry Hill and cycle paths as detailed on DBFL Drawing number 152105-2000 Rev B titled Road Layout Sheet 1 submitted on the 1st day of June 2017, and in accordance with the detailed requirements of the planning authority. The cost of the design and implementation of these works shall be borne solely by the developer. The work shall be completed prior to the making available for occupation of any house within phase 2, or earlier if required by the planning authority.

Reason: In the interests of pedestrian, cyclist and traffic safety.

20. 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.

21. The construction of the development shall be managed in accordance with a detailed Construction Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including phasing, noise management measures, site operational hours and off-site disposal of construction/demolition waste.

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

22. A detailed construction traffic management plan shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic (which shall prohibit construction traffic accessing the site via Roseberry Hill), details of construction-related parking during the construction phase (which shall not be within adjoining housing estates), the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

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

23. 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 and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public 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 or maintenance 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 and maintenance until taken in charge of the development.

24. 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.

25. The developer shall pay the sum of €240,000 (two hundred and forty thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of road and footpath improvements works on roads serving the proposed development, to be carried out by the planning authority. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition 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.

