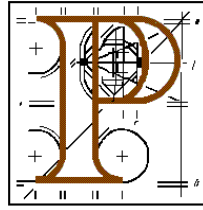


An Bord Pleanála



Inspector's Report

Reference: PL10.245441

P.A. Reference: 15/50

Title: 25 housing units, new vehicular access, demolition of changing rooms (revised to 32 units).

Location: Nuncio Road, Kilkenny.

Applicant: Torca Developments Ltd.

Appellants: Anne and Dick Shortall

Observers: None

PA: Kilkenny County Council

Type of Appeal: Third party against grant

Decision: Granted with conditions

Date of Site Visit: 17th December 2015

Inspector: Philip Davis

1. Introduction

This appeal is by local residents against the decision of the planning authority to grant permission for 25 houses (revised later to 32 units) on former GAA training fields in the suburbs south of Kilkenny City. The grounds of appeal relate mostly to overshadowing and related amenity issues.

2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

Nuncio Road, Deansground, Kilkenny

Nuncio Road runs due south from the grounds of Kilkenny Castle, and is just under 1 km south of the City Centre. It is within the townland of Deansground. Although the road pre-dates the suburbanisation of the area, it is now a typical suburban link road with housing estates on either side dating from the past half century or so. It is wide and straight with grassed verges and substantial footpaths, with a recessed parking bay next to the former James Stephens GAA pitches, the sole area of substantial greenspace along the road.

The site and environs

The appeal site, with a site area give as 1.102 hectares, is a rectangular, largely flat area of land used as the James Stephens GAA club training pitches, but now unused. It is on the western side of Nuncio Road. There is a single building on site, the changing rooms. It is almost entirely surrounded by a high, c.3 metres block wall. It has a single access, a gate at the south-eastern corner of the site.

North of the site are dwellings. One dwelling, no. 17 Nuncio Road, has an elongated narrow garden parallel to the boundary wall. West of this, the site is bounded by the rear access lane beyond which are 11 no. dwellings facing north.

West of the site are a number of semi-detached dwellings facing to the north-west, with further houses beyond this.

South of the site is an extensive area of former ecclesiastical property, now part of Kilkenny Social Services, which includes a small group of sheltered houses directly adjoining the site and with an access immediately next to the appeal site access.

East of the site is Nuncio Road. There is a small grassed area (outside the wall, but apparently part of the site) next to the path, and at this point there is a parking recess. Opposite Nuncio Road are semi-detached dwellings.

3. Proposal

The proposed development is described on the site notice as follows:

Planning permission is sought by Torca Developments Ltd. to construct a 25 unit residential housing estate at the former James Stephens GAA Club practice pitch, Nuncio Road, Deansground, Kilkenny to comprise as follows: 17 no. 4 bedroom 2-storey detached houses, 6 no. 4 bedroom 2-storey semi-detached houses & 2 no. 2 bedroom bungalows, new vehicular pedestrian access to public road, 0.128 hectares of amenity landscaped pocket park with children's play area, demolition of existing single storey changing rooms, and all associated site development works and boundary treatments.

The development site adjoins:

- 1. St. Joseph's Convent which is a protected structure (National Inventory Reference NO. 12002001).*
- 2. St. Joseph's Convent School which is a protected structure (National Inventory Reference NO. 12002002)*

Following a request by the planning authority, the proposed development was revised as follows (as stated on the site notice).

The proposal has been revised to provide 32 unit residential housing estate, to comprise as follows: 10 no. 4 bedroom 3-storey detached houses, 22 no. 3 bedroom 3-storey semi-detached terraced houses and all ancillary works.

4. Technical Reports and other planning file correspondence

Planning application

The planning application, with supporting documentation, was submitted to the planning authority on the 3rd February 2015. Following a request for further information, revised plans with additional reports and documents were submitted on the 16th July 2015 and were advertised. These additional reports included an Archaeological Assessment Report and a Landscape Development Report.

Internal and External reports and correspondence.

A number of observations and objections were submitted by local residents.

A **Habitats Directive Screening Report** concludes that significant impacts can be ruled out, so no NIA is required.

A letter on file from the GAA Club gives consent for the application.

Housing Section: Requests standard condition in relation to Part V.

Irish Water: No objection, standard conditions recommended.

Parks Department: Requests further information with regard to landscaping and the proposed open space. Following the submission of the revised details it is stated that the play area is not in accordance with section 11.7.3.1 of the development plan in terms of size and access – revised details are requested.

Department of Arts, Heritage and the Gaeltacht. Notes that the site is within an area of archaeological potential and within the confines of a recorded monument (a 16th century manor house site). An Archaeological Impact Assessment is requested.

City Engineer: A number of detailed issues are raised and additional information is requested. Following the submission of further information, a number of issues are noted, including that there seem to be only 68 parking spaces, while 72 are indicated in the application documents. A number of conditions are recommended.

Kilkenny CC Planners Report: The first planners report notes that it is within an area zoned 'Z5' 'existing residential'. The proposed density is considered 'at the low end of the scale'. The need for larger family homes within the City is acknowledged. A number of design issues were noted and further information was requested which was subsequently sent out on the 27th March 2015. Following the submission of further information, objections from local residents to the increased heights and density were noted, as were the other comments internally, but the proposed development was considered acceptable subject to conditions. Planning permission was recommended.

5. Decision

The planning authority decided to grant permission subject to 23 no. conditions. Most are standard conditions. Condition 5 requests a number of alterations, including the omission of one 'C1' unit to allow for the relocated main sewer to connect through. Condition 8 requested revisions to the area of play space provided.

6. Planning Context

Planning permissions – appeal site

There are no records of previous applications or appeals for the site.

Planning permissions – adjoining areas

None relevant on file.

Development Plan

The site is in an area zoned as ‘existing residential’ in the Kilkenny City & Environs Development Plan 2014-2020. It has a specific zoning objective Z5, which states -

Nuncio Road – any development of this site must include for an appropriate level of openspace which will be designed and laid out in a manner that will provide for a local pocket park to serve the general area.

New residential developments are permitted in ‘existing residential’ areas subject to policy and amenity considerations. A recorded ancient monument (the site of a 16th Century manor house) is just south of the site and it is within an area of archaeological potential. There are two protected structures in the former ecclesiastical complex to the south.

Relevant extracts from the 2014-2020 Kilkenny City & Environs Development Plan are attached in the appendix to this report.

7. Grounds of Appeal (residents of Deans Court).

- The appellants state that they support the principle of the development, but have concerns about specific design issues, specifically with regard to units 11-24.
- It is argued that the increase in number and height of houses following the further information request is contrary to section 5.2 of the development plan with regard to the design context.
- It is submitted that the dwellings will overlook and interfere with the privacy of adjoining dwellings to the north east, and that this is contrary to Section 7.2 of the Sustainable Residential Guidelines 2009 and the Best Practice Urban Design Manual, and Se.11.8.7 of the development plan.
- It is argued that there is insufficient information on the plans to assess the finished floor levels for the proposed use, and so the impact on adjoining properties, having regard to the local topography.
- It is argued that the separation distance, at 21 metres, is too close and that other options should have been explored to protect the privacy of upper windows.
- It is argued that C.5 of the permission is ambiguous and as such is contrary to the Development Management Guidelines.

8. Applicants response

- It is submitted that the proposed development is in line with best practice in design and is supported by the surrounding community.
- With regard to privacy, it is stated that there is a 22 metre separation distance between rear windows and that there are only obscured velux windows at attic level.
- It is argued that while the proposed development will somewhat affect the southern aspect of the appellants rear garden, it is submitted that in the context of a rear garden depth of 14.5 metres all reasonable standards for the development of urban sites have been applied.
- It is argued that the density and layout is reasonable having regard to the location of the site close to the urban core of Kilkenny.
- It is submitted that shadow casts would be excessive in the context of the proposal and are not justified.
- With regard to condition 5, it is argued that the removal of a dwelling is excessive and not required in order to accommodate a 5 metres wayleave.

9. Planning Authority's Comments

They submit that they have no further comments to make.

10. Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- **Principle of development**
- **Design, density and layout**
- **Residential amenity – privacy, overlooking, etc.**
- **Cultural heritage**
- **Visual impact**
- **Parking and Traffic**
- **Condition 5**
- **Appropriate Assessment and EIA**
- **Other issues**

Principle of Development

The appeal site is within an area zoned 'existing residential', where 'dwellings' are permitted. The site is considered suitable for housing by the planning authority. It is noted in the development plan that it is anticipated that the population of the city is likely to grow and there is a

particular shortage of family units. The site is within walking distance (about 1 km) from the city core, so in the context of the development plan, the 2009 'Sustainable Residential Development in Urban Areas Guidelines', and the Regional Planning Guidelines, I would consider that there is a strong presumption in favour of a moderate to high residential use for the site. Within the context of the 2009 Guidelines, I would consider that a target of 35 to 50 units per hectare would be appropriate. The original proposed development was well below this level, but the second revised submission, at 32 units (one removed by condition by the planning authority) is just below this density level.

Design, Density and layout

The overall context for assessing the quality of the design of a development of this scale and context is set out in the 2009 Sustainable Development in Urban Areas guidelines, the Urban Design Guidelines of 2009, and DMURS, in addition to the guidance in the development plan. I note that the latter more or less reflects national guidance in this regard, although I would note that some of the development standards (especially the parking requirements) make the achievement of the density standards very difficult.

The relatively narrow width of the site to a large extent constrains the potential layout of the scheme. The need for a road entrance reduces the design options for following the existing building line along Nuncio Road. Siting the open space area along the road also prevents the creation of a meaningful urban form, but in compensation will eventually result in what should be a well landscaped amenity. I note the comments on file on a submission to the planning authority on behalf of the Ossory Community Services Trust, the operators of the sheltered housing, to relocate the open space to a position closer to the sheltered houses. This certainly is an argument that has merit, and is arguably more consistent with the objectives of the Z5 zoning than that proposed, which in reality is unlikely to be used much by residents outside the appeal site. Ideally, a design layout which involved a continuation of the building line along Nuncio Road, with the open space and playground provided next to the sheltered housing (and possibly shared via a pedestrian gate), would seem a significantly better solution, but this would involve a fundamental redesign.

I would note that the requirement for 2 parking spaces per unit in addition to visitor parking seems very excessive for a location so close to the city centre (68 in total) - I find it hard to see how such a requirement can be reconciled with the density and design guidance in national guidance. This quantum of parking has seriously reduced the area of greenspace in front of houses and in particular the focus on curtilage parking for most of the units is arguably not consistent with the advice set out in section 4.2.3 of DMURS. The layout on the south-eastern side (units 25 to 32) is much more consistent with DMURs and represents what I would consider to be a more appropriate style of urban design and layout.

The houses are of quite a conventional design, with an attic floor added to some to achieve the density requirements. For an estate like this, clearly an appropriate choice of finishes for both houses and ancillary features, in addition to a good choice of landscaping is key. I would consider that this is an issue that can be dealt with by condition.

I would note that the north-eastern corner of the site abuts a rear lane which connects to suburban roads to the north and east. In line with DMURS it would be consistent to require a pedestrian gate at the end of the road to allow access and permeability through the estate to adjoin roads. However, this lane is of a very low quality in several respects so I would question if there is any merit in insisting on thru-access.

On balance, while I have concerns about the location of the pocket park and the excessive amount of curtilage parking and its consequent impact on urban design and density, I would consider the design and density to be generally in line with the objectives of national design guidance and the development plan.

If, however, the Board is minded to only grant permission on the basis of an improved design, I would recommend a condition along the following lines:

- Move units A7 to A10 to face east along Nuncio Road where the pocket park is now.
- Re-orientate units A1 to A3 to face Nuncio Road.
- Re-orientate units A 4 to A6 to face west.
- Integrate open space and playground into area now occupied by units A7 to A10 and visitor parking, with lowered wall, railing, and gate into adjoining sheltered housing.

A simpler way of achieving the same broad aim would be to set a condition such that units A7 to A10 be swapped with the pocket park (with an orientation for the houses facing south), the 'visitors and designated' parking (no's 1 to 18) to be reduced by 4 no. spaces and moved to the frontages of units 25 to 32 to allow the access road to run more north, with the playground moved to integrate with an enlarged area of open space.

I would also recommend a reduction of required parking to 1 space per 'C' unit with 6 visitors parking spaces provided for those units, and 2 curtilage spaces per 'A' unit only.

Residential amenity

The design and mix of houses are of a standard which I would consider gives adequate internal amenity to each of the proposed dwellings.

The site abuts dwellings on three sides. To the south, there is a small development of supported housing, on the west side there are larger semi-detached houses with relatively short rear gardens abutting the site. On the north side one house almost directly abuts the site next to the open space while the other houses have quite substantive rear gardens.

The appellants dwelling backs onto the site. Units 11 to 24 are essentially three storey dwellings with rear gardens averaging just over 14 metres in length. The separation distance between the rear elevations is just under 22 metres, which is generally considered a universal minimum standard providing adequate privacy between opposing windows. The third floor bedrooms do not have windows facing the opposing dwellings, only rooflights. Somewhat unhelpfully, there are no cross sections across the houses and adjoining properties provided in the application plans.

The eaves height of house type 'C' is given as 9 metres. By my calculation, this gives an angle from the centrepoint of a ground floor window for the houses on the western side to the proposed eaves of around 16°. There is a slight levels difference, but I don't consider it very significant. I would consider that this angle is sufficient that it would result in minimal loss of direct light. The loss that would occur would be in the mornings during the winter months. While this is a loss of amenity, in the context of a relatively densely populated suburban area, I would consider it to be well within what would be normal and a shadowcast analysis to confirm this would not be necessary.

The sheltered housing to the west is somewhat more sensitive than conventional houses, but its orientation is such that I do not consider that there would be any overlooking or loss of light, although as outlined above I would consider it justified to relocate some of the units to ensure they abut open space, rather than private rear gardens.

The closest existing dwelling, to the north-east, is adjoined by the proposed open space. Other dwellings along the northern side have extensive rear gardens so I do not consider that there would be any significant overshadowing, loss of light, or other amenity impacts.

Cultural Heritage

The site directly adjoins a recorded ancient monument (the manorial castle of the Dean of Ossory), a now long demolished manor house. The DoAHG requested a full archaeological assessment. This was provided, but there is no record of a comment by the Department on the adequacy or otherwise of this assessment. The report includes an overview of the historical background to the site, and a report based on a series of test trenches. Some artefacts and features were uncovered, but these were not considered to be significant, and no features of the manor house or other buildings were uncovered.

I would consider the archaeological assessment to be thorough and satisfactory. I consider that it provides sufficient information to be confident that there are no significant features on the site so further archaeological study is not necessary.

The site also adjoins what are described as two protected structures – these are listed in the NIAH as 19th Century convent school buildings. However, these do not seem to be listed in the relevant appendix in the current development plan. Notwithstanding this, on the basis of available information and my site visit I do not consider that the proposed development would have a significant impact on their settings.

The proposed development also includes the demolition of a dressing room building and parts of the surrounding walls. These are all quite simple structures of relatively recent origin so have no significant cultural or architectural importance.

Parking and Traffic

The site is to be accessed via a new road entrance, in addition to a separate pedestrian entrance on the north-eastern corner. No access is provided to the laneway adjoining. As I have noted above, the provision of carparking seems excessive, but it is actually slightly below the development standard (72 – 68 are provided). Sight-lines and junction design are in line with accepted standards and I would consider the internal layout of roads and footpaths to be acceptable. There are no cycle parking standards for houses in the development plan, but having regard to the general layout I would consider it acceptable in this regard, although I would note the difficulty residents within the terraces (the C1 units) would have in bringing bikes to rear garden sheds or lock-ups.

Condition 5

Both the appellant and applicant have raised issues with condition 5 of the planning decision. This appeal is of course being decided *de novo*, but this condition, specifically, 5(a) relates to an alteration requested by the planning authority. This relates to a required wayleave for an existing foul sewer (shown on drawing no. 141107/PL003 submitted on the 3rd February 2015). The applicants state that this is unnecessary as a sufficient 5 metre wayleave can be allowed within the permitted layout. In the absence of more detailed plans indicating the revisions to the foul sewer layout this is difficult to confirm either way, but it does seem that there is space within the layout to allow for a 5 metre gap between the units, specifically between units 13 and 14. In this regard, I would recommend that the condition requiring a deletion of a dwelling not be repeated, but would note of course that under S.34(13) of the Act this would not permit the applicant to interfere with a wayleave. If a problem arises in achieving the required room for the relocated foul

sewer, then a new planning application for the alterations would be required.

Appropriate Assessment and EIA

The appeal site is approximately 400 metres south-west of the nearest point of the River Barrow and River Nore SAC site code 002162. An AA screening report was carried out by the planning authority. Due to the nature of the proposal, which would not have any discernible impacts beyond the boundaries of the site (all sewerage and water run-off will go to the city drainage system), I consider it reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002162, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

Due to the relatively small scale of the proposed development and the absence of any sensitive environmental receptors in the immediate vicinity I do not consider that there would be a requirement for EIA.

Other issues

The site is not indicated on any available source to be prone to flooding. The proposed development is subject to a standard S.48 contribution and a Part V condition.

11. Conclusions and Recommendations

I conclude that the proposed development is not contrary to the objectives of the development plan and would not seriously injure the amenities of dwellings in the area and would otherwise be acceptable.

I recommend therefore that subject to the conditions set out below, planning permission for the proposed demolition of the changing rooms and construction of a 32 unit housing estate be granted for the following reasons and considerations.

REASONS AND CONSIDERATIONS

Having regard to the zoning designation of the area, the scale, density and design of the proposed development, and the separation distances between the proposed buildings and surrounding dwellings, it is considered that the proposed development would be in accordance with the objectives of the development plan, would not seriously injure residential amenities, and would otherwise be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. Works shall not commence until the developer has submitted revisions to the satisfaction of the planning authority indicating that the foul sewer can be laid without encroaching on the required 5 metre wayleave. In the event of a failure to agree, such matter shall be referred to An Bord Pleanála for a final decision.

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

3. Details of the materials, colours and textures of all the external finishes to the proposed dwellings and boundary walls/railings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. 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.

5. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

6. The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

7. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

8. 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 over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

9. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

10. No walls, fences or other boundary treatment shall be constructed around the front gardens of the proposed dwellings, and front gardens shall be kept as "open plan".

Reason: To ensure that the proposed scheme remains open plan in nature/appearance, in the interest of visual amenity.

11. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, no room in the proposed houses shall be used for the purpose of providing overnight paying guest accommodation without a prior grant of planning permission.

Reason: In order to prevent overdevelopment of the site in the interest of residential amenity.

12. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority.

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

13. 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 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.

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

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

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

15. 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 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. 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 97(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 for the area.

16. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the

development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

17. 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.

Philip Davis,
Inspectorate.
24th December 2015