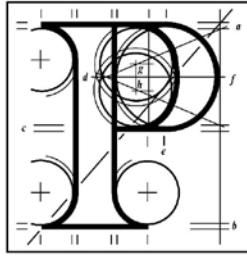


An Bord Pleanála



Inspector's Report

Development: Construction of 1 block containing 2 semi-detached two storey houses, boundary treatments, connection to necessary services and infrastructure, and all associated landscaping and site works at Ard na Deirge, Knockyclovaun, Killaloe, Co. Clare.

Application

Planning authority: Clare County Council
Planning application reg. no. P14/717
Applicant: ODM Properties Ltd
Type of application: Permission
Planning authority's decision: Grant, subject to 19 conditions

Appeal

Appellants: William Buck & Michelle Burke
Type of appeal: Third party -v- Decision
Observers: None
Date of site visit: 5th November 2015
Inspector: Hugh D. Morrison

Site

The site is located 0.5 km due west of Killaloe town centre. This site lies in the north eastern corner of a new housing estate at Arda na Deirge. This estate is accessed off New Street to the north, which runs on an east/west axis between the town centre and the R463. It is composed of two storey detached and semi-detached dwelling houses, which are typically grouped around grassed areas of open space. To the south south east of the site is an area that is presently under construction.

The site itself is of regular shape and it extends over an area of 0.072 hectares. This site is relatively level and it is bound to the south and the west by the aforementioned housing estate, while to the north and the east it is, variously, bound by the rear gardens to two pairs of two storey semi-detached dwelling houses at Beal Boru and a single storey detached dwelling house. Boundary treatments comprise blockwork walls, hedgerows, and concrete post and timber boarded fences. The southern boundary is undefined “on the ground”, as it is continuous with a triangular area of ground between the site and the nearest estate road.

Proposal

The proposal would entail the construction of a pair of two storey semi-detached dwelling houses. These dwelling houses would be sited towards the centre of the site, in a position that would continue the slightly staggered alignment of the row of similar two storey semi-detached dwelling houses to the west. They would replicate the size and design of these dwelling houses, too, in providing three bedroom accommodation over a floorspace of 123.8 sq m.

No access arrangements or drive-ins are shown on the submitted site layout plan. This plan does however show the aforementioned triangular area laid out to provide a continuation of the existing footpath and a spur to the existing carriageway, both of which would run beside the frontage to the site.

Planning authority’s decision

Following receipt of further information, permission was granted subject to 19 conditions, the second of which requires that revised plans be submitted that show the re-siting of the proposed dwelling houses a minimum of 20 degrees in a clockwise direction and the provision of vehicular and pedestrian accesses to the site.

Technical reports

Irish Water: No objection, standard notes requested.

Grounds of appeal

The appellants reside in Phase 1 of the Ard na Deirge development. The proposal would be directly opposite their dwelling house and so they express the following concerns:

- Under the original development of the estate the site was not envisaged as being developed and so to develop it now would impact negatively on this estate.
- The numbering scheme at Arda na Deirge does not allow for the proposal and so its introduction would cause confusion.
- The proposal would lead to over-development of Phase 1.

Additionally, they are concerned that the applicant does not appear to have sufficient legal interest to access the site and that to permit the proposal may lead to a further delay in the taking in charge of the estate by the local authority and/or damage to existing estate roads. (In a bid to ensure that such damage does not arise, a recent permission requires that a temporary access for construction traffic be made available from Hill Road).

The appellants express support for the case planner's originally drafted reasons for refusal, which pertain to residential amenity, insufficient legal interest, and the absence of a Part V application.

Responses

The planning authority has not responded to the above grounds of appeal.

The applicant has responded as follows:

- Attention is drawn to an earlier permission for an identical development (cf. application reg. no. 06/449). This permission was not implemented due to the then prevailing economic climate and it expired in 2011. The current application simply seeks to re-instate it.
- The question of house numbering is one that would be capable of being addressed in a manner that would avoid confusion.
- Over-development would not result as the two proposed dwelling houses were part of the original scheme of 80 dwellings originally proposed for the overall site.

The impact of the proposal on neighbouring properties would be mitigated by conditions nos. 4, 9, 15, and 19 of the draft permission.

The applicant summarises a series of contracts that have a bearing on the applicant's right of access to the site. Thus, they have sufficient legal interest to develop their site.

Planning history

The site and the larger site of which it forms a part

- 01/278: Construction of 87 dwellings (37 detached, 12 terraced, 16 duplexes, and 22 apartments) + site entrance and all associated site works: Outline permitted.
- 04/1859: Construction of 87 dwellings: Approval on foot of outline: Permitted.
- 06/449: Construction of a pair of two storey semi-detached dwelling houses: Permitted.
- 11/36: Construction of 2 dwelling houses and retention of as built and completion of 25 dwelling houses, estate roads, boundary treatments, street lighting, entrance from public roadway, and all associated site works: Permitted at appeal PL03.239393.

Adjoining site to the south east

- 14/767: Construction of 8 dwellings + temporary construction access from Hill Road to Ard na Deirge: Permitted.

Development Plan

The Clare County Development Plan 2011 – 2017 (CDP) identifies Killaloe as a small town in its settlement strategy. The East Clare Local Area Plan 2011 – 2017 (LAP) shows the site as lying within the settlement boundary and in an area zoned residential R1, which is identified as being land to the rear of the Benson Box Factory. Some of this land was developed under the previous LAP. New development proposals must be accompanied by a masterplan for the remainder of this land.

Assessment

I have reviewed the proposal in the light of the CDP and the LAP, relevant planning history, and the submissions of the parties. I consider that the current application/appeal should be assessed under the following headings:

- (i) Land use and planning history,
- (ii) Siting and design,
- (iii) Access,

(iv) Miscellaneous, and

(v) AA.

(i) Land use and planning history

- 1.1 The site lies within the north eastern corner of the Arda na Deirge housing estate. This estate is identified as R1 in the LAP and it is zoned residential.
- 1.2 The parent permission for the said housing estate comprises the outline and detailed applications reg. nos. 01/278 and 04/1859. Under this permission, 87 dwelling houses were approved for development on a phased basis across a site that encompasses land to the east and to the west of a spine road that is accessed from New Street. The former land has been largely developed under the first phase, while the latter land, which was envisaged as being developed under the second and third phases, has yet to be developed. The current appeal site was not included within the site which was the subject of the parent permission.
- 1.3 Application reg. no. 06/449 proposed that a pair of two storey semi-detached dwelling houses be constructed on the site, which coincides with the current appeal site. This application was permitted on 2nd July 2006. It was not implemented and it duly expired five years later.
- 1.4 Application reg. no. 11/0036 proposed the construction of 2 dwelling houses and the retention and completion of 25 dwelling houses, estate roads, boundary treatments, street lighting, entrance from public roadway, and all associated site works. This application was permitted at appeal (PL03.239393) on 30th May 2012, subject to 21 conditions, including the following one:
- 4(1) No further works shall be carried out on plot numbers 12 to 19 (inclusive) and number 24 until the following works have been completed to the satisfaction of the planning authority: (d) public open space areas adjacent to dwelling...number 11...*
- The 27 dwelling houses comprised in this permitted application are, along with 3 other dwelling houses, all within the south eastern portion of the overall housing site. Together they form Phase 1 of the development. The application site included within its red edge the current appeal site, which was shown as an area of open space. This area is the subject of the aforementioned condition.
- 1.5 The estate road layout in the vicinity of the current appeal site shown under permitted application reg. no. 11/0036 is similar to that originally proposed. However, it differs from that shown on the submitted site layout plan, and this plan fails to depict accurately what is “on the ground”.

- 1.6 Essentially, the permitted layout shows the dwelling houses numbered 8 – 11 (inclusive) on a cul-de-sac with a turning head opposite numbers 10 and 11. These dwelling houses overlook a centrally sited area of open space that would be continuous with the area of open space envisaged for the appeal site. Dwelling houses further to the south east (numbers 12 – 19 (inclusive)) are shown as being accessed by a continuous estate road that wraps around the aforementioned centrally sited area of open space.
- 1.7 By contrast, the estate road layout “on the ground” re-specifies the said cul-de-sac as a through road to the dwelling houses further to the south east, while retaining the permitted through road to these dwelling houses. The centrally sited area of open space has consequently become an island that is severed from the appeal site. The submitted site layout plan depicts the aforementioned re-specification, but it erroneously shows the originally envisaged through road as a cul-de-sac with a turning head and it includes an extension of the carriageway and footpath from in front of the dwelling houses numbered 10 and 11 on a line that abuts the front boundary of the appeal site. This extension does not exist “on the ground” and it is not included within the red edge of the appeal site.
- 1.8 The planning history of the overall housing site does not indicate that the variations in the layout of the estate road have been authorised. Critically, these variations separate the centrally sited area of open space from the appeal site and so they have implications for the utility and amenity value of both this area and the area of open space envisaged for the appeal site.
- 1.9 Condition 4(1)(d) cited above refers to the appeal site insofar as dwelling house number 11 lies beside this site and so the site is, notwithstanding its earlier now expired planning history, conditioned to be an area of open space. Thus, to accede to the current proposal would contravene this condition. It would also risk prejudging any application to regularise the revised estate road layout, insofar as it would remove an area of open space that was previously envisaged as being connected to the centrally sited area of open space. These interconnected matters need to be assessed “in the round” rather than on a piecemeal basis.
- 1.10 I, therefore, conclude that the current proposal for the appeal site would contravene an extant condition pertaining to this site and that, in any event, the future of this site needs to be assessed in conjunction with wider issues pertaining to unauthorised development in its vicinity.

(ii) Siting and design

- 2.1 The proposed pair of two storey semi-detached dwelling houses would be sited roughly in the centre of the appeal site in a position that would align with the

slightly stepped back pattern of the existing pairs of two storey semi-detached dwelling houses to the west.

2.2 At the application stage the relationship between the more easterly of the two proposed dwelling houses and the existing dwelling house to the south south west was addressed by means of draft condition 2(a), which requires that the proposed dwelling houses be resited a minimum of 20 degrees in a clockwise direction to avoid direct overlooking. The proposed dwelling houses would thus parallel the eastern boundary of the appeal site. However, their alignment with the dwelling houses to the west would be disrupted.

2.3 The relationship in question would entail a separation distance of c. 18m between the corresponding first floor bedroom windows, whereas the conventional distance is 21m. At present there is a tree on site that lies between these windows and so, if retained, it would screen the one from the other. However, as this tree is leaning to one side and affected by ivy, a question mark lies over its condition.

2.4 The aforementioned slightly stepped pattern of sitings would be reflected more fully if the proposed dwelling houses were themselves to be sited 1m further back. This additional depth would increase the separation distance at issue to 19m and in conjunction with either the retention of the existing tree or its replacement would ease sufficiently overlooking, while maintaining the existing pattern of the streetscape. In the event that the Board is minded to permit the proposal, these matters could be conditioned.

2.5 The design of the proposed dwelling houses would appear to replicate that of the adjacent dwelling houses on the existing estate. Thus, dimensions and features would appear to be the same. The submitted plans do not specify finishing materials. Thus, the projecting gabled elements to the front elevations should be finished in brick to complement this finish on the surrounding comparable features.

2.6 I conclude that, provided the pair of semi-detached dwelling houses is stepped back by a further 1m and the projecting gabled elements to their front elevations are finished in brick, they would be compatible with the amenities of the existing estate.

(iii) Access

3.1 Under the first heading of my assessment, difficulties arising with the depiction of the proposed off-site access arrangements and the existing access arrangements “on the ground” are discussed. Furthermore, the “marooned” position of the site was raised at the application stage, under a request for further information. The applicant thus submitted a copy of a solicitor’s letter

with an attached extract from the relevant contract. However, these documents are not accompanied by the plans that they cite and so I am not in a position to verify their applicability to either the triangular portion of land forward of the appeal site or the access arrangements within the existing estate.

3.2 The aforementioned subject was revisited by the applicant in their response to the appellants' grounds of appeal. They thus cite three contracts that are of relevance to the appeal site. The first of these refers to retained rights of way to adjoining lands, which would include this site, and the subsequent two refer back to this first contract. Again, the absence of accompanying maps inhibits certainty over what is being claimed. Nevertheless, there is a *prima facie* case for accepting that the applicant has a right of way to their site.

3.3 Physically, there appears to be scope to provide on-site drive ins and possibly turning heads. However, in view of my earlier discussion under the first heading, how such drive-ins would themselves be accessed is unclear. Additionally, the presence of a further two trees, which contribute positively to the streetscape and so are worthy of retention, has not been addressed.

3.4 I, therefore, conclude that insufficient information has been submitted and that, given the wider unresolved questions of access to the site itself, it would be premature to condition on-site access arrangements.

(iv) Miscellaneous

4.1 The appellants raise several other matters that have not been effectively covered under the foregoing headings. They question whether a satisfactory numbering scheme for the proposed dwelling houses, within the context of the existing estate, can be established and they express concern that the proposal may lead to a further delay in the taking in charge of the estate.

4.2 The applicant has responded to the first of these items by stating that confusion would be avoided in the said numbering scheme, although I note that no details of any solution to this problem have been furnished.

4.3 With respect to the second of these items, the timing of taking in charge is a matter for the local authority. Whether the type and size of construction traffic that would be involved in the development of the current proposal would justify a delay in taking in charge is presumably an open question.

(v) AA

5.1 The site does not lie within a Natura 2000 site, although it does lie within c. 1 km of the Lower River Shannon SAC (site code 002165) and the Lough Derg (Shannon) SPA (site code 004058). The proposal would entail the construction of a pair of two storey semi-detached dwelling houses within an existing housing

estate, which is connected to the public sewerage system. Thus, this small scale proposal within the town of Killaloe would have no significant effects, either direct, indirect, in-combination, or short and long term ones, on the Conservation Objectives of these Natura 2000 sites.

5.2 Having regard to the nature and scale of the development and the nature of the receiving environment, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

Recommendation

In the light of my assessment, I recommend that the construction of 1 block containing 2 semi-detached two storey houses, boundary treatments, connection to necessary services and infrastructure, and all associated landscaping and site works at Ard na Deirge, Knockyclovaun, Killaloe, Co. Clare, be refused.

Reasons and considerations

1. The proposal would contravene materially condition 4(1)(d) attached to the permission granted to application reg. no. 11/0036 for a site, which includes the current site, and which requires that the current site be an area of public open space. Thus, to permit this proposal would be contrary to the proper planning and sustainable development of the area.
2. The applicant has submitted insufficient information with respect to access to the site and access within the site. Specifically, the submitted plans show access arrangements to the site that do not accurately depict access arrangements “on the ground”, some of which appear to be unauthorised, and they show no access arrangements within the site. The applicant has thus failed to demonstrate that the site is capable of being satisfactorily accessed and so to permit the proposal in these circumstances would be premature and contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison

Inspector

4th January 2016