

## An Bord Pleanála



### Inspector's Report

**Reference:** PL93.245595

**P.A. Reference:** 15/413

**Title:** Extend and complete 3 no. three-storey duplex apartment blocks (6 apartment units).

**Location:** Mount Suir, Bawndaw, Gracedieu, Waterford City

**Applicant:** WM Neville & Sons

**Appellants:** Linda & Arthur Fowler

**Observers:** None

**PA:** Waterford City and County Council

**Type of Appeal:** Third party against grant

**Decision:** Granted with conditions

**Date of Site Visit:** 17<sup>th</sup> February 2016

**Inspector:** Philip Davis

## 1. Introduction

This appeal is by residents against proposals to construct a further 6 units connecting to two duplex blocks in a suburban area west of Waterford City. The proposed development is a completion of a partially abandoned series of duplex units left unfinished.

An oral hearing was requested by the appellants – the Board has already decided to determine the appeal without an oral hearing.

## 2. Site Description

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

### **Mount Suir, Waterford**

Mount Suir is a small housing estate dating from around 2007 in the townland of Bawndaw, a new suburb west of Waterford City – about 3km by road from the City Centre. It is sited on a south facing slope overlooking a shallow valley separating it from older suburbs. Carrickpheirish Road, a modern urban link road, runs along the base of the valley, linking the newly developing area to Grace Dieu Road, the main link to the city and the national road network. Mount Suir consists of a mixed apartment/retail development next to Carrickpheirish Road and Mount Suir Road, the cul-de-sac which serves the estate. The latter road runs north up a distinct slope, with the apartments (some of which are only partially complete) to the east and open undeveloped land to the west, serving a cluster of duplex units consisting of four blocks, three connected, one separate, with link roads to a small series of cul-de-sacs serving small terraced and semi-detached houses further up slope and to the north. The duplex units are mostly occupied, but some are not complete, with two having unfinished units at the end, and some of the completed units are visibly empty.

### **The site and environs**

The appeal site consists of two separate plots, one on the eastern side of the central duplex block, and one on the western side of the easternmost block, separated by a parking area and access road. Total site area is given as 0.685 hectares. The larger of the two sites has the foundation remains of what was to be an extension of the duplex block, the smaller (the eastern) has a semi-derelict ground floor unit constructed. The two parts of the site are separated by Mount Suir road which runs between them. The adjoining units on both blocks are complete, but empty and in a visibly poor condition. The rest of both blocks, as are the other two completed blocks, are occupied.

### 3. Proposal

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

*To extend and complete construction of 3 no. three storey terraced duplex apartment block (6 units).*

### 4. Technical Reports and other planning file correspondence

#### Planning application

The planning application, with plans and specifications and a supporting letter, was submitted to the planning authority on the 22<sup>nd</sup> July 2015.

#### Internal and external reports and correspondence.

The appellants to this appeal submitted objections which are on file.

**Irish Water:** Notes requirement for a connection agreement and that the constraints of the Irish Water Capital Investment Programme applies.

**Water Services Department:** Requires that the developer submit details of agreements for surface water drainage connection measures prior to the commencement of development.

**Building Control Officer:** States that a Fire Safety Certificate is required for the development.

A **Habitats Directive Screening Assessment** on file states significant impacts on Natura 2000 sites can be ruled out and no significant adverse impacts are anticipated.

**Waterford CC Planners Report:** The report notes that the site is zoned phase 1 residential use in the Waterford City Development Plan 2013-2109. The planning history is noted – original permissions from 2000 and 2002, with modifications granted in 2005. It is noted that Part V contributions have been paid, as have S.48 Development Contributions on foot of the original permission. It is noted that the design is generally similar to that originally permitted and is in accordance with the zoning designation. Permission is recommended subject to conditions.

### 5. Decision

The planning authority decided to grant permission subject to 12 no. standard conditions, including a bond requirement.

## 6. Planning Context

### Planning permissions – appeal site

In April 2002 the planning authority decided to grant permission for a housing development on the site – (02/389) – the layout is more or less as now built. The decision was appealed (PL31.201399), but this appeal was subsequently withdrawn. Subsequently, permission was granted for modifications to the layout, including the re-location of the duplex units within the site (02/331).

In April 2002 the Board, on appeal, overturned a grant of permission (05/523) for a residential development on the site for the reason that it was considered to represent a substandard form of development on the site (PL31.126793).

### Planning permissions – adjoining areas

In August 2008, the Board, on appeal, upheld the decision of the planning authority (07/355) to grant permission for a major mixed use development on the landholding south of the appeal site subject to 24 conditions. Much of this development has not been completed (PL31.227598). The applicants are the same as for this appeal.

### Development Plan

The area is zoned 'existing residential' in the Waterford City Development Plan 2013-2019.

## 7. Grounds of Appeal

The appellants, residents of 25 Mount Suir, object on the basis of the claimed failure of the applicants to have had regard to building and fire regulations and good practice in the carrying out of the development. It is claimed that the houses are in a dangerous condition and the services are inadequate. It is claimed that the planning authority is in breach of its duty of care to permit if it permits further development on the site.

## 8. Applicants response

The applicant claims that the units were not completed because of delays caused by the ESB in re-routing overhead cables. It is submitted that the proposed development is part of the developers attempt to finish up and tidy the overall development.

It is also claimed that condition 3 (for a €60,000 euro bond) is excessive given that all services have been completed.

## **9. Planning Authority's Comments**

The planning authority requests that the Board note that there is an on-going process of taking in charge underway. It is considered that the planning application provides an opportunity to ensure the adequate completion of the overall development. It is considered that building control issues lie outside the provisions of the Planning and Development Act 2000.

## **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**
- **Residential amenity**
- **Bond**
- **Appropriate Assessment and EIA**
- **Other issues**

### **Principle of Development**

The proposed development is within a residentially zoned area – the zoning has not changed substantively since the Development Plan was revised after the original permission, although standards for such duplex apartments did change – the proposed layout reflects the changes. The sites were part of the overall permitted development and it is not proposed to increase the number of units from that originally granted. The permission for duplex apartments on the site has expired, but I do not consider that the new development plan alters the planning context substantively.

Since the original permission, national policy on residential development has been revised, as has policy on road layouts (DMURS). Notwithstanding this, as the overall layout of the development is complete, I do not consider that any of the new national guidelines are relevant to the development as proposed.

### **Residential amenity**

The overall development as permitted (with alterations in 2005) is substantially completed, although the mixed use development along the frontage with Carrickpheirish Road west of Mount Suir Road was never started. The road and path and lighting is in place, and all the small dwellings on the northern part of the site are finished and occupied, although I note the appellants submission that there are still outstanding issues. The planning authority states that the process of taking roads and open spaces in charge is ongoing.

The apartment block with shops on the Carrickpheirish Road frontage east of Mount Suir is largely completed, but with vacant and unsightly units spoiling what was otherwise a reasonably good design. The dwellings to the north of the site have all been completed and seem to be all occupied. Two of the four duplex units were, however, never finished – both have foundations in place for the three side units, and one has a first floor constructed, but these have clearly been abandoned for some years. In both blocks, the pair of apartments adjoining the appeal site(s) are apparently vacant, and are visibly in poor condition with heavy condensation build up on the windows and a visible deterioration of external fittings. The duplex blocks appear to have been constructed poorly, with, for example, the tiling on the steps to the upper units never having been adequately grouted.

The overall development is quite unsatisfactory, and I would have strong sympathies for the appellant and the situation they find themselves in. Notwithstanding this, it is difficult to see how refusing permission would improve the situation. At least if the additional units were constructed it would give some opportunity for outstanding issues on the adjoining buildings to be addressed, either during construction or by way of a bond requirement. I would also note that during my site visit I observed children playing on the vacant first floor element – this is arguably a hazard and so completing the development would have benefits for the estate.

In all other respects I do not consider that the proposed units would interfere with either the visual amenities of the area, or cause overshadowing or loss of light/privacy to adjoining units.

### **Bond**

The applicant argued that the bond requirement is excessive – however, having regard to the planning history of the site and the need to ensure adequate completion of the overall development, I consider the €60,000 set by the planning authority to be reasonable.

### **Appropriate Assessment and EIA**

The appeal site is within Waterford City. The nearest Natura 2000 site is the River Suir SAC, site code 002137. This SAC is designated for a variety of riverine species and habitats. Most of the river and banks as it flows past Waterford City is designated, as is the estuary and harbour. At its closest, it is just under 1 km from the site. As the site is serviced via water and sewerage I do not consider that there are any pathways for pollution or other impacts, so I do not consider that there is any possibility of an impact. There are no other SAC's or SPA's within several km of the site.

I therefore consider that it is 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. 002137, 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 scale of the proposed development and absence of specific sensitive environmental receptors in the vicinity I do not consider that the issue of a requirement for EIA arises.

### **Other issues**

I note that Irish Water did not confirm that there is adequate capacity for water supply or sewerage for the site, but as it is part of the overall development which is connected to the public water and sewerage network, I consider it reasonable to assume that it is acceptable in this regard.

The site is not indicated on any available documentation to be subject to flooding.

The planning authority state that a development contribution has already been paid in respect of the proposed development, so no development contribution under S.48 is required.

There is some ambiguity about the Part V requirement – in the report it is stated that this has been discharged, but the planning authority repeated the standard condition. As a precautionary measure, I would recommend repeating the condition.

I note that there are three recorded ancient monuments within the estate, and one very close to the appeal site. There was an archaeological condition attached to the original permission so I assume there was monitoring and appropriate mitigation at the time of construction. In any event, both sites have had foundations put in place so any remains would have been destroyed, so I do not consider that there is a requirement for a further such condition.

There are no protected structures within the near the vicinity of the site.

The road network is in place, and there are sufficient shared parking spaces and waste collection spaces for the proposed additional apartments.

The appellant raised concerns about building control and fire regulation issues, but I concur with the comments of the planning authority that these issues lie outside the provisions of the 2000 Act. The provisions of S.34(13) of the 2000 Act as amended apply.

I do not consider that there are any other substantive issues arising in this appeal.

## 11. Conclusions and Recommendations

I conclude that the proposed development is in accordance with the zoning designation and would not seriously impact on local amenities and would otherwise be in accordance with the proper planning and sustainable development of the area.

I recommend therefore that subject to the conditions set out below, that for the following reasons and considerations planning permission for the proposed units be **granted**.

### REASONS AND CONSIDERATIONS

Having regard to the planning history of the site, the pattern of development of the area, the nature and scale of the proposed apartments and its design and siting in relation to neighbouring property, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the residential zoning designation and would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, 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. Details of the materials, colours and textures of all the external finishes to the proposed apartments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place



within the curtilage of the duplex units without a prior grant of planning permission.

**Reason:** In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the dwelling.

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 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.

6. 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.

7. 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 of the development until taken in charge.

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**Philip Davis,**  
**Inspectorate.**  
**23<sup>rd</sup> February 2016**