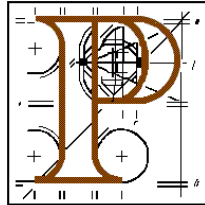


An Bord Pleanála



Inspector's Report

PL06D.246224

DEVELOPMENT:-

15 dwellinghouses to the rear of existing house on a 0.545 hectare site with ancillary services, roads, landscaping and associated works, including two units for family need, at 'Rockhurst', Enniskerry Road, Kilternan, Dublin 18.

PLANNING APPLICATION

Planning Authority: Dun Laoghaire Rathdown County Council
Planning Authority Reg. No.: D15A/0768
Applicant: Celsus MacDonnell
Application Type: Permission
Planning Authority Decision: Refuse Permission

APPEAL

Appellant: Celsus MacDonnell
Type of Appeal: First v. Grant
Observers: None

DATE OF SITE INSPECTION 1st June, 2016.

INSPECTOR: Mairead Kenny

SITE LOCATION AND DESCRIPTION

The site is in the village of Kiltiernan in south-west county Dublin at the outer side of the M50 and within 3km of the nearest interchange, which is junction 15 Carrickmines. The area is subject of a local area plan (LAP), which envisages development of the Kiltiernan / Glenamuck area from its existing largely greenfield / low density residential condition. In this context the site is on the western side of the area covered by the LAP. The site is on the Enniskerry Road between the well-known local landmarks of the Golden Ball (remnants from former demesne house and public house) to the south and Kiltiernan Church of Ireland to the north.

The wider area remains largely rural in character, in places commanding a village-like atmosphere. There is also indications of new emerging development including at a site opposite the Golden Ball public house. This is very much an area in transition. Established residential development in the area includes one-off houses and on the eastern side of the public road close to the site is a row of semi-detached cottages.

This particular stretch of Enniskerry Road is narrow and windy and the centreline is marked by a solid line. The overall plot in the ownership of the applicant comprises the detached dwellinghouse 'Rockhurst' at Enniskerry Road and the associated rear garden, stated to be 0.72 hectares in all. The existing entrance from Enniskerry Road serves the detached dwellinghouse, which is to be retained on a smaller plot of stated area of 1,590 square metres. The site subject of the proposed residential development is of stated area of 0.5450 hectares. The site contains a number of trees, which appear likely to result from planting of part of the original garden.

To the north of the site are lands which are zoned 'parish / community centre node' which reflects the present location of Kiltiernan Rectory and a nursing home and sheltered housing scheme of 26 units. To the south and south-west of the site is the former Kiltiernan Garden Centre / 'Hedge Roe' furniture design, now re-located. Some site clearance works including the demolition of the former commercial premises has taken place on these lands in recent years.

Photographs of the site and surrounding area, which were taken by me at the time of my inspection are attached.

PROPOSED DEVELOPMENT

The development comprises 15 no. dwelling units.

The scheme includes:

- 14no. semi-detached and 1 no. detached house
- all houses are two-storey three bedroom units
- floor area of each house is 113.5 square metres

- two of the houses are stated to be for a family need
- all associated site development and landscape works
- 30 no. parking spaces
- site to share access with the adjacent 'Hedge Roe' site
- SUDS layout and other services.

The application submissions include:

- **Arboricultural Assessment** - JM McConville and Associates
- **Design Statement** - Ray MacDonnell Associates
- **Planning Statement** - Ray MacDonnell Associates
- **3D Impressions**
- **Letter of Intent regarding Part V** - Ray MacDonnell Associates
- **Letter of consent regarding access** – Kilternan Property Limited.

PLANNING HISTORY

The site

There is a long history of applications related to 'Rockhurst' the most relevant of which are described below.

PAC/380/15 – advice given to the prospective applicant related a scheme of 18no. units – Planning Authority noted the letter of consent regarding shared access which overcomes reason 1 of D13A/0170 – scale, height and design of duplex units a concern and should be replaced with standard two-storey houses – consider impact on permitted houses on adjoining site.

Under **Planning Reg. Ref. D13A/0170** the Planning Authority refused Outline Permission for a development proposed on the overall site of 0.72 hectares of 26 residential units. The reason for refusal related to prematurity pending construction and completion of the adjacent access road located in the lands to the south as required under the LAP as well as lack of public and private open space.

The Planner's report in the above refers to the report of the manager regarding the LAP implementation. It is proposed to allow interim development involving up to 1,000 units in advance of the Glenamuck District Distributor Road Scheme. In

particular 500 units would be allowed at the village core on Enniskerry Road subject to criteria including conformity with the approved 2007 LAP, achievement of road and traffic measures and likelihood of early construction.

PL06D.239521 Concurrent with PL06D.239662 / Planning Reg. Ref. 10A/0716 at Hedge Roe site to south.

The Board upheld the decision of the Planning Authority to refuse Outline Permission (Reg. Ref. D11A/0297) for 15 no. units adjacent an approved dwellinghouse (previously permitted under Reg. Ref. D10A/0645) on a 0.72 hectare site. The site identified comprised the entire 'Rockhurst' plot and a total of 16 no. units would have resulted (including the permitted house).

The Board's decision referred solely to access and in particular to the use of a single access onto Enniskerry Road to serve 16 residential units and the failure to present a layout which would allow for a vehicular link to the indicative loop road. The development was deemed to constitute a material contravention of the LAP.

In its decision the Planning Authority indicated that the density of development proposed was inadequate and that the access by way of the indicative loop road was not achieved and that a requirement that development facilitate orderly development of adjoining lands was not met. As such the development was deemed to be contrary to LAP (2007) and to the DLRCDP (2010-2016).

Nearby lands

Under **PL06D.245117** permission was recently refused by the Board for a scheme involving partial demolition and partial change of use of the **Golden Ball** public house, to office and public house, development of 44 no. residential units and upgrading and realignment of the existing site entrance onto Enniskerry Road and provision of internal access and future road connection to the site to the north. The reason for refusal related solely to the overall quality of urban design response and adverse visual impact.

There is a live appeal at the Golden Ball site – PL06D.246537.

Under **PL06D.239662** the Board on October 24th 2012 upheld the decision of the Planning Authority to grant permission for development of 58 houses and 10 apartments on a 2.22 hectare site, the 'Hedge Roe' site. Relevant details include:

- conditions only considered by the Board
- condition 7 as worded in the decision of the Board stated

Future possible vehicle/footpath/cycle track links with the property to the north, 'Rockhurst' shall be facilitated within the application site from the internal roads terminating between residential units 14 and 15 and 32 and 33.

These internal roads shall be constructed up to the site boundary with no 'ransom strip' remaining.

Reason: *In the interest of clarity and to comply with the objectives of the Kiltiernan / Glenamuck Local Area Plan, 2007.*

PLANNING POLICY CONTEXT

Dun Laoghaire Rathdown Development Plan 2016-2022

The site is zoned objective A "to protect and/or improve residential amenity".

RES3 refers to policy to promote higher residential densities subject to ensuring a balance between the reasonable protection of existing residential amenities and the established character of areas and the need to provide for sustainable residential development. In this context it is Council policy to have regard to the relevant listed national guidance documents. These include:

- Sustainable Residential Development in Urban Areas (SRDUA - 2009).
- Urban Design Manual - A Best Practice Guide (2009).
- Irish Design Manual for Urban Roads and Streets (2013).

RES3 and section 8.2.3.2 indicate that as a general rule **minimum default densities** shall be 35 units per hectare.

Higher density may be constrained by the need to enhance and protect heritage sites or infrastructural shortcomings including the capacity of the road network.

RES7 refers to the overall housing mix which shall ensure a wide variety of types, sizes and tenures.

Section 8.2 sets out the Development Management standards and includes requirements for car parking (two spaces per 3-bed unit depending on design and location).

Section 1.3.4.2 refers to Kiltiernan / Glenamuck and notes the key elements of the LAP. It states that the LAP is quite prescriptive in terms of the permissible range of densities and building heights and generally seeks to echo the relatively low-rise context of the surrounding area. Proposed residential densities are relatively modest.

Kiltiernan Glenamuck Local Area Plan 2013

The overall strategy includes a graduation of densities from higher densities adjacent the LUAS line to lower densities further from the main public transport artery.

The site is within 'parcel 12' in relation to which densities of 35-40 dwellings per hectare is proposed. This is the lowest density level. Building heights for this land is suggested to be 2-3 storeys. A primary bus corridor is indicated along the Glenamuck Road at Golden Ball.

The movement strategy includes a new distributor road and a link distributor road. A dotted line indicates an indicative loop road to serve parcel 12.

BF01 is to promote a vision for a desired character for Kiltiernan, and to establish guidelines to encourage development which creates a sense of place.

INTERNAL REPORTS

The **case planner's** report dated 1st February, 2016 may be summarised as follows:

- The previous applications all related to the subject site and the 'Rockhurst' plot and were all 0.72 hectares
- details of the previous 12no. applications including 9no. refusals are provided in tabular form
- relevant history on the adjoining site is noted – including condition 7 of PL06D.239662
- the policy relating to density is a minimum standard
- overall layout needs to be reconsidered
- the site is landlocked and dependent (including for construction traffic) on lands to south/southeast to access the proposed loop road – PL06D.239622 is live but not developed
- permission should be refused.

The **Parks and Landscape Services Report** of 19th January, 2016 outlines a number of comments relating to the landscape design proposals and tree survey plan and schedule and recommends that further information be requested.

The report of **Transportation Planning** dated 29th January 2016 notes proposals in Site Plan Drawing 15092/PG04a, which indicate a vehicular access connection towards the west of the site and a pedestrian / cycle access nearer the Enniskerry Road end. No detail of arrangements for construction access. D13A/0171 was deemed premature pending completion of adjacent access road in lands to the south. Development remains premature taking into account the LAP requirement to curtail additional access points off Enniskerry Road. Other details need to be addressed by applicant.

Irish Water submitted two reports. The report dated 13th January 2016 states that the water network proposed is not acceptable from a maintenance aspect respect and recommends that further information be requested. The subsequent report dated 19th January 2016 recommends conditions.

The report of the **Building Control Section** recommends conditions.

The report of the **Drainage Planning Municipal Services Department** – recommends that further information be requested in relation to the stream to which excess surface water would be discharged and other matters.

The report of the **Housing Department** dated 14th December, 2015 confirms that the site and the proposal is capable of complying with the requirements of Part V of the Act subject to agreement being reached on land values and development costs. This can be addressed by way of a condition.

SUBMISSIONS / OBSERVATIONS

No third party made submissions or observations.

DECISION OF PLANNING AUTHORITY

The Planning Authority decided to refuse permission for four reasons which may be summarised as follows:

- at 28 units per hectare density is not sufficiently high to comply with the Kiltiernan/Glenamuck Local Area Plan and the DLRCDP 2010-2016 and contravenes materially Policy RES 3
- premature pending construction and completion of adjacent access road located in lands to south of site as required in the LAP 2013
- having regard to the proposal to include surface water attenuation within the main open space concern that this would result in inadequate useful open amenity area provision resulting a substandard level of amenity for future residents
- location of open space to north-east of the site and layout of scheme would result in lack of passive surveillance of the amenity area and limited connectivity between the open space and the dwellings resulting in a poor form of development and a substandard level of amenity for future residents.

GROUNDINGS OF APPEAL

The main points of the first party appeal include:

- provisions for edge of centre sites under the SRDUA refer
- we refer to revised site plan 'D' attached which proposes one more unit and a density of 29.6 units per hectare which is reasonable on a long narrow half hectare site in an area of mainly detached houses
- the applicant was advised to omit duplex units incorporated in a scheme of 33.3 units per hectare

- permission on the adjacent site was at a density of 32 units per hectare – there should be flexibility in relation to density and open space
- as stated in SRDUA the overriding concern should be the quality of the environment – also required that higher densities not be achieved at an unacceptable amenity cost
- permission could be granted subject to access to the future road
- construction phasing plans can be provided prior to commencement
- the design for the SUDS system is tried and tested – it could also be installed under the road surface and revised by condition
- placement of open space evolved as a result of past guidance and discussion with Planning Authority and in context of site levels and SUDS design and as a buffer with the existing house – it was not questioned at pre-application consultations
- drawings ‘C’ and ‘D’ show alternative locations which can be further detailed or subject to conditions
- the site has been zoned since 2004 for residential development and the development would provide good quality dwellings at a time of national shortage
- permission should be granted and conditions to address future access through the former Garden Centre could be attached
- details of surface water attenuation system attached.

Drawings enclosed.

RESPONSE TO APPEAL

The Planning Authority in its response to the First Party Appeal makes the following points:

- at 28 units per hectare the density is significantly below the density outlined in the LAP and the CDP
- the gross density of 31 units per hectare permitted under D20A/0716/PL06D.239662 was deemed acceptable as part of that site is zoned NC
- the subject site is zoned in its entirety for residential development and even so does still not achieve the density permitted on the adjacent site

- access to the proposed loop road and for construction phase is unclear and the access wayleave on the adjoining lands is not included on the submitted plans
- does not overcome reason 1 of the refusal under Planning Reg. Ref. D13A/0170 as the adjacent access road has not been constructed and at present lands to the south remain undeveloped
- a report from the Transportation Department dated 29/01/2016 refers
- the planning history should be considered.

ASSESSMENT

I consider that the main issues arising in this case relate to:

- whether the development complies with guidance and policy relating to use of urban lands
- whether the scheme is acceptable in terms of the residential amenities and is effectively integrated with the area and is suitably accessed
- other issues
- Appropriate Assessment.

Policy and Guidance relating to use of urban lands

I note the appellant's reference to the SRDUA but consider that the recently adopted LAP and DLRCDP both incorporate national guidance and adapt it to local conditions. As such I consider that the scheme should primarily be addressed in the context of the prevailing local policy provisions.

There is a long established objective to promote higher densities and specifically to promote a minimum of 35 units per hectare. This matter was subject of detailed consideration in the previous appeal considered by the Board for a similar density of development on this site. The latter scheme provided for a total of 16 no. houses on a 0.72 hectare site, i.e. a density of over 22 dwellinghouses per hectare. The current scheme is at a higher density of about 28 units per hectare, which remains substantially below the minimum density set out in the DLRCDP (35 units per hectare) or in the Kiltiernan Glenamuck Local Area Plan (35-40 units per hectare) for this land.

Notwithstanding the decision of the Planning Authority to refuse permission for reason of inadequate density and the recommendation of the Inspector that this be upheld, the Board's previous decision (PL06D.239521) raises no issues in respect of density. I address below the policy context and the extent to which it differs, in order to assist the Board in its decision on this appeal.

The overall situation is that the planning context is not materially altered since the making by the Board of its previous decision. The previous decision was made in the context of the 2007 Kiltarnan / Glenamuck Local Area Plan and the exact same provisions apply in relation to 'parcel 12' in current (2013) LAP. In particular both require 35-40 dwelling units per hectare for this land, which is the lowest identified density and which applies only to a few plots of land governed by the LAP. The Board has recently also refused permission for a site within parcel 12 and again omitted any reference in its decision to site density (PL06D.245117 at the Golden Ball).

The adoption of the 2016-2022 DLRCDP also effectively re-states the position on housing density which applied under the previous development plan. Referring to the minimum density of 35 dwelling units per hectares the wording of the two plans is largely unchanged:

as a general rule the minimum default density for new residential development ... shall be 35 units per hectare may not be appropriate in all instances, but will serve as a general guidance rule particularly in relation to 'greenfield' sites or larger 'A' zoned areas. (DLRCDP 2016-2022)

The Board is advised that the current LAP refers to the option of meeting the demand for own door housing without compromising on the delivery of medium to higher densities within public transport catchments at a later date. This site would not fall within an area likely to be positioned in the short term within a high quality transport corridor and it is designated as being at the lower end of densities proposed. The site is however close to a primary bus corridor and within a few kilometers of the LUAS at Bride's Glen. In general I do not consider that the objective of supporting public transport provision warrants a requirement for a higher density of development at this site.

In the situation where there are no new policies of relevance, which would warrant re-visiting of the matter of site density, the Board may wish to consider that there is no reason to change its previous stance on density. Given the density of about 28 units per hectare and having regard to the planning history and to the long and narrow configuration of this 0.545 hectare site, which is identified for 2-3 storey development, I do not recommend that the Board uphold the decision of the Planning Authority under reason 1.

Access and integration

Access

A core and essential principle in terms of the LAP is the requirement that the site and all of parcels 12 and 13 be accessed off the proposed indicative access route which is shown on the relevant maps. That was not achieved or proposed under the previous appeal case related to this site, which provided for all houses to access

directly onto the public road at the existing site frontage. Compliance with the access requirement of the LAP is achievable and would involve traversing through one landholding namely the 'Hedge Roe' site to the south.

The application submissions include a letter of consent which confirms

'that access shall be granted for vehicular, pedestrian and cycle traffic through our lands into your adjoining property Rockhurst at the first inner road and second inner road in accordance with Planning Permission D10A/0716 of 1-September 2011 and the Kiltiernan Local Area Plan'.

There is no further information presented and no legal agreement or phasing or timescale. The submissions in 2012 on behalf of the first party under the appeal at 'Hedge Roe' acknowledged the merits of that proposal but also indicated that no discussions had taken place at that time and that the developments would have to be co-ordinated. Clearly sufficient time has elapsed for such agreements to be put in place.

The determination by the Planning Authority that the development is premature pending the completion of the access road is a significant issue in this appeal. I consider that in the absence of any legal agreement (other than a letter of consent) or a timescale for completion of the access road or any indication by the third party of commencement of development, the decision of the Planning Authority on this matter should be upheld.

The Board could consider a request for further information from the applicant on this matter. I do not recommend that approach in the context where the appeal submissions are virtually silent on this issue and where the applicant indicates that he has been 'forced' into agreeing future access with the adjacent land owners.

Integration

In terms of the design of the development I consider that the layout affords reasonable levels of amenity and privacy to both future residents of the scheme and to existing residents insofar as there is provision for a 700 square metre open space and for an additional landscaped area of 150 square metres. I do not share the concerns of the Planning Authority in relation to the amenity value of that space – its position relative to the houses is poor but the space is a regular shape and is not without amenity value and the total provision of 850 square metres exceeds the minimum requirement of 525 square metres. In the context of this small scheme I do not consider it reasonable to describe the open space as hidden.

Regarding the attenuation tank I agree with the first party that this could be satisfactorily integrated or could be relocated. I note in relation to private open space provision that the rear gardens are all north facing but are of reasonable size.

I conclude that the amenity requirements of future occupants would be adequately met by the proposals for public and private open space.

I do have reservations about the general layout of the proposed scheme, which I next address. If the Board takes into account the permitted access at the adjacent lands to the south, it is also appropriate to consider the layout of the residential scheme envisaged under that permission and how it would interact with the proposed scheme. An outline of the permitted development is shown on the application drawings. I consider that the outlook from the houses would be poor being towards the gable walls of the permitted houses and the access roads. In addition there would be overlooking to the rear gardens of the permitted development from the front of the proposed houses.

I note the intention that the scheme will utilise a palette of natural materials complementary to the surrounding context. Further the applicant's submissions state that roads and parking bays will be finished to ensure that they blend with the site and lands as much as possible. However, the poor layout is a fundamental matter, which cannot be resolved by condition and in my opinion it warrants a refusal of permission. The layout previously considered by the Board did not share this deficiency insofar as future occupants of the proposed development are concerned - the orientation of the houses provided for south facing gardens and the outlook differed.

In my opinion the two schemes would be poorly integrated and the development proposed would score poorly in relation to the criteria set down in national and local policy / guidance such as the Urban Design Manual. I consider that a refusal of permission is warranted for this reason. However, I also consider that this would constitute a 'new issue' in this appeal, and that the parties should be given an opportunity for comment prior to any decision to refuse permission on that basis. As there is another substantive reason for refusal I do not recommend this reason to the Board but the Board may wish to consider addressing this in its Direction.

Other matters

Material contravention

I do not consider that a material contravention arises in this case. The Planning Authority has indicated in reason 1 that the proposed development would materially contravene the zoning objective. However, I consider that the zoning objective is achieved notwithstanding the density of development proposed, which is below the minimum guidance.

Part V

I note the applicant's proposal that Part V shall apply to 13 of the residential units only as two are to be reserved for family members. The Case Planner's report comments on the lack of documentary evidence relating to the family members

connections with this area. Discussion between the applicant and the Housing Department has taken place but is not concluded. I agree with the recommendation of that Department that a condition be attached.

Surface Water and Flooding

I consider that the outstanding issues relating to surface water disposal could be addressed by condition.

I am satisfied that the submissions demonstrate a low level flood risk.

Traffic and Parking

Subject to the resolution of the connection to the future indicative access loop through lands to the site, the development is generally acceptable in terms of traffic and parking.

Archaeology, Ecology and Trees

There is little or no likelihood of significant ecological or archaeological constraints within this site.

Regarding the protection of trees the arboricultural assessment submitted with the application describes the individual specimens on site noting that there is no tree preservation order or development plan objective relating to the site. None of the trees to be removed are Grade A specimens. The report sets out a method statement for the construction phase. I consider that the protection of trees is reasonably considered and is not a material issue.

Conditions

There is a Section 49 Supplementary Contribution Scheme for the Glenamuck District Distributor Road and Surface Water Attenuation Ponds.

Appropriate Assessment

In terms of potential connectivity between the site of the proposed development I consider that relevant European Sites are *Rockabill and Dalkey Island SAC* and *Dalkey Islands SPA*. These are designated for porpoise, reef habitat and tern species. Due to the distance from the site and the nature of the proposed development I am satisfied that there will be no impact directly or indirectly on the qualifying interests. The *Wicklow Mountains SAC* is not likely to be impacted directly or indirectly.

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, which is a fully serviced location, no appropriate assessment issues arise.

CONCLUSIONS AND RECOMMENDATION

I conclude in relation to the prevailing policy context that the policy to encourage densities of 35 to 40 dwelling units per hectare should not be rigidly adhered to in the circumstance of this case involving a relatively small and elongated site in a low density area where particular LAP policies apply. I consider that the development, which achieves a density of 28 units per hectares is acceptable in this instance having regard *inter alia* to the planning history. I recommend that the Board reject reason 1 of the decision of the Planning Authority. In the event that the Board disagrees with this conclusion I note that alternative layout submitted with the appeal propose an additional house.

Reason 2 of the decision of the Planning Authority should be upheld in view of the nature of the submissions on this matter and the limited progress to resolve the access arrangements by way of the indicative looped road.

I agree with the Planning Authority that the development would result in a poor standard of residential amenity for the occupants of the permitted development to the south in particular, but this would constitute a new issue in the appeal. I do not agree with reasons 3 or 4 of the decision of the Planning Authority.

I recommend that the Board uphold the reason 2 and refuse permission for the reasons and considerations below.

REASONS AND CONSIDERATIONS

1. It is the policy of the Planning Authority as set out in the Kiltiernan / Glenamuck Local Area Plan, 2013 that Land Parcel 12 in which the site is located shall be accessed from the proposed indicative loop road to the south of the site. The Board is not satisfied on the basis of the evidence presented, particularly in the absence of legal documentation and timescales for completion of the permitted access road that the development could be completed in accordance with the requirements of the Local Area Plan. The Board considered therefore that the proposed development is premature pending the construction of an access route through the lands to the south of the site to serve the proposed development.

Mairead Kenny

Senior Planning Inspector

3rd June 2016