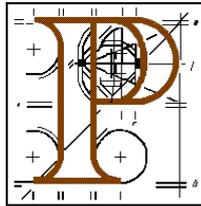


PL92.246447

## An Bord Pleanála



### Inspector's Report

**An Bord Pleanála Ref.:** PL. 92.246447

**Development:** Permission for the construction of 8 no two storey houses comprising 2 detached and six semi-detached, service roadway, sewerage, footpaths, demolition of existing shed and all ancillary siteworks.

**Location:** Millersbrook, Nenagh North, Borrisokane Road, Nenagh.

#### Planning Application

Planning Authority: Tipperary County Council.

Planning Authority Reg. Ref.: 15/600260

Applicant: Brendan Galvin

Type of Application: Permission.

Planning Authority Decision: Grant permission with conditions.

#### Planning Appeal

Appellants: (1) Martin Boyle, Mary Boyle, Brian Lombard, Pamela O'Brien, Wong Ho, To Mui Ho, Elizabeth Cooney, Residents of 1, 2, 3 and 4, The Oaks, Millersbrook.  
(2) Millersbrook Management Limited.

Type of Appeals: 3<sup>rd</sup> Party v Permission.

Observers: John Dore

Date of Site Inspection: 3<sup>rd</sup> August 2016.

Inspector: Bríd Maxwell.

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1 The appeal site, which has a stated area of 0.33 hectares, comprises an undeveloped / gap site within an established residential development at Millersbrook off the Borrisokane Road to the north of Nenagh, Co Tipperary. The site is roughly rectangular in shape and is occupied by a shed structure located adjacent to north-western boundary. The shed and the site in general is overgrown and unkempt.
- 1.2 The north-western boundary which adjoins agricultural land part of the Brook Watson Estate is defined by trees and hedgerows. The south-western boundary which backs onto the rear gardens of three two storey residential properties fronting onto the Borrisokane Road is defined by mature hedging trees and fencing. The south-western and north-eastern boundaries of the site which front onto the Millersbrook Service roadway and The Oaks cul de sac respectively are defined by masonry walling approximately 1.2m high with footpath adjacent. The Oaks comprises four detached two storey dwellings which overlook the site. To the south and east within the overall Millersbrook development are a mix of semi-detached, detached and terraced two storey properties with a number grassed open spaces.
- 1.3 Photographs of the appeal site and vicinity taken on the date of my site visit are appended to this report.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 The proposal as initially submitted sought permission for the construction of 8 no two storey dwellinghouses (2 detached and 6 semi-detached), sewerage, footpaths, demolition of existing shed and all ancillary site works. In response to a request for additional information the proposed density was reduced and the revised proposal was for seven dwellings (four semi-detached three beds and

3 detached 4 beds)<sup>1</sup>. The layout was also revised in terms of vehicular access with omission of the proposed access from The Millersbrook Service Road resulting in a single access only from the Oaks cul de sac spur. The proposed dwelling design involves napped plaster finish and concrete tiles to roof. An area of public open space is proposed on the south-eastern corner of the site adjacent to the road. Proposed servicing is by way of connection to the Millersbrook water supply and wastewater infrastructure save for surface water drainage for which it is proposed to install an independent surface water sewer and outfall. As regards surface water drainage it is proposed to provide an independent surface water sewer to serve the proposed dwellings.

### **3.0 POLICY CONTEXT**

#### **3.1 NATIONAL POLICY**

##### **3.1.1 Sustainable Residential Development in Urban Areas May 2009**

3.1.1.1 The Guidelines encourage high quality sustainable residential development, urban form and design. They are concerned to promote a sequential approach to development and to create an overall design framework with linkages to the existing developed area. They support Local Area Plans and the phasing of development, also having regard to the availability of infrastructure. Regard is had to the availability of community facilities, public transport and the quality of open space. Chapter 3 concerns the role of design. Chapter 4 provides for planning for sustainable neighbourhoods. Chapter 6 refers to growth in small towns and villages, which it defines as 400 to 5,000 persons and provides that higher densities are appropriate in certain locations.

3.1.1.2 Chapter 7 deals with the home and its setting and discusses issues such as daylight, sunlight, privacy, open space and communal facilities.

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<sup>1</sup> Condition 2 of decision of the local authority further reduced the overall density to six dwellings.

Regard is had to the accompanying DOEHLG 'Urban Design Manual- A best practice guide 2009' and to the 12 criteria to promote quality sustainable urban design discussed in this document. Regard is also had to the application of these criteria, which are divided into three sections: Neighbourhood, Housing Site and Home.

## **3.2 Development Plan**

### **3.2.1 The Nenagh Town and Environs Development Plan 2010 – 2016**

applies. The site is zoned existing residential. The development objective is *“to protect and enhance existing residential areas”*.

3.2.2 *I note that the adjoining lands to the north are zoned Serviced Sites Phase 1. Objective SC18 “The Councils will seek the provision of a 5,5 acre playing pitch within the Brook Watson Estate as part of the first phase of residential or business or employment development.”*

3.2.3 Policy SC2: New Housing Development “It is the policy of the Councils to require that new residential development conform to the Sustainable Urban Guidelines for Planning Authorities 2009

3.4 Chapter 9. Development Management and Design Standards provides the design parameters for residential development.

- In terms of density guidelines Table 9.1 sets out in relation to urban fringe sites 20-25 units per hectare would be taken as a guide.
- The Council's require that all planning applications for housing schemes over 5 number dwellings are accompanied by a detailed design statement.
- The Council's will require that a development proposing four or more dwellings incorporates a minimum of 15% of the gross site area as usable public open space. Private open space to be provided at 65sq.m for 3-4 bed dwellings.

(Relevant extracts are appended to this report.)

## **4.0 PLANNING HISTORY**

### **4.1 No planning history on the site.**

- N/2864 is the governing permission form Millersbrook estate relating to residential development of 121 dwellings. Granted on 27<sup>th</sup> June 2000.

## **5.0 PLANNING AUTHORITY'S DELIBERATIONS AND DECISION**

### **5.1 Submissions to the Planning Authority**

- Third Party submission from John Dore owner of corner dwellinghouse at the entrance to Millersbrook which adjoins to the south-west of the appeal site. Septic tank and percolation area serving his dwelling partly located on site and is not addressed within the application.
- Submission from the appellants indicated no objection in principle however density is considered excessive giving rise to traffic concerns, open space and parking considered deficient. Sewage pipe traversing site is not addressed and legal entitlement to carry out the development is questioned as Millersbrook Management company have not granted consent to connect to services.
- Millersbrook Residents Association submission questions legal entitlement as services roads open spaces are under the management of Millersbrook Management Company. Concerns regarding density, congestion and construction impact, health and safety issues.
- Submission by HRA Planning on behalf of Millers Brook Management Ltd. objects on grounds of overdevelopment. Ownership and management of access and services to the site are under legal challenge and therefore access to services may prove difficult. Note failure to provide a design statement, inadequate layout.

### **5.2 Interdepartmental Reports**

- Water Services report seeks additional information to demonstrate legal entitlement to connect to Millersbrook roads lighting and drainage infrastructure. Questions capacity of surface water drainage infrastructure.
- Roads Department - no objection subject to conditions.

- Planner's initial report asserts that the density of development is inappropriate and sought revised proposal for lower density.
- Final report recommends further reduction of density to provide six dwellings in total.

### 5.3 Decision

5.3.1 Tipperary County Council issued its notification of decision to grant permission dated 29<sup>th</sup> March 2016 subject to 24 conditions which included the following:

- *Condition 2.* Total number of dwellings to be reduced from 7 to 6 Four detached and one pair of semi-detached. Proposed units 1 and 2 to be replaced with a detached dual aspect dwelling. Turning area to be positioned at the end of the cul de sac rather than within the open space. Area adjacent to dwelling labelled no 7 to be incorporated into private curtilage. Dwellings re-sited to provide a minimum 1.5m between side of each dwelling and side boundary wall. One and two defined car parking space within the curtilage and each 3 and 4 bed dwelling respectively.
- *Condition 3.* *Boundary details to be agreed.*
- *Condition 4.* *Infrastructural services to be completed prior to occupation of dwellings.*
- *Condition 5.* *No development to commence until developer has obtained legal agreement from the owners of the adjoining infrastructure required to service the development and rights of access/wayleaves as may be necessary.*
- *Condition 6.* *External finishes.*
- *Condition 7.* *Obscure glazing to bathroom windows.*
- *Condition 8.* *Damage to roads to be made good.*
- *Condition 9 10 & 11, 14, 16.* *Surface water sewer requirements. Reinstatement of roads following construction of surface water sewer. Certification in relation to surface water sewers.*
- *Condition 12.* *Public lighting.*

- *Condition 13 & 22. Open space and landscaping. Tree protection.*
- *Condition 15. Naming of the development to be agreed.*
- *Condition 17 & 21. Roads footpaths design in accordance with recommendations for site development works for housing areas.*
- *Condition 18 & 23. Noise dust and construction mitigation.*
- *Condition 19. C & D Waste management.*
- *Condition 24. Development contribution €27,652*

## **6.0 GROUNDS OF APPEAL**

### **6.1 First Third Party Appeal**

6.1.1 The first third party appeal is submitted by Martin & Mary Boyle, Brian Lombard and Pamela O'Brien, Wong Ho and To Ming Ho, and Elizabeth Cooney who live in No's 1, 2, 3 & 4 The Oaks, the four dwellings which overlook the site from the northeast. The grounds of appeal are summarised as follows:

- Council failed to require advertisement of significant further information in breach of the Planning and Development Acts.
- Extended deadline for submission of further information request lapsed on 7<sup>th</sup> March therefore the application should have been invalidated.
- Condition 2 (b) (i) to (v) infringes third party rights. Inappropriate for the Planning Authority to redesign layout by condition.
- Applicant has no legal rights over the existing walled boundary and planting to the SE and NE of the site.
- Construction disruption to residents of The Oaks.
- Sewer connection from the first party's dwellinghouse through the site is not addressed within the application.
- Permission is legally unsound. Yearly contribution for the upkeep, maintenance and running of the estate is presently €140.
- Traffic safety issues and inadequate parking provision.
- Development should be refused in the interest of traffic safety and proper planning and sustainable development of the area.

- Development cannot comply with the Recommendations for Site Development Works for Housing Areas.
- No objection in principle to development of housing on the site in a sustainable fashion, however density is excessive and proposal represents overdevelopment.

## **6.2 Second Third Party Appeal**

6.2.1 The Second Third Party Appeal is submitted by the Millersbrook Management Company Limited and is summarised as follows:

- The ownership and management of the access and services to the site are under legal challenge.
- The developer has failed to discharge his obligation to arrange for the transfer pursuant to Section 4 of the Multi-Unit Development Act 2011 and Circuit court proceedings have issued in this respect. An order is being sought pursuant to Section 24 of the Multi Unit Developments Act 2011.
- Management Company have not been approached with regard to the relevant consents to the development.
- The applicant and the proposed development might not secure the necessary access or services to the site to facilitate development.

## **7.0 RESPONSES TO THE APPEAL**

### **7.1.1 First Party Response to the Appeal**

7.1.1 The First party responded to the first third party appeal. A response to the second third party appeal was received outside the appropriate period and therefore returned. The response to the appeal of Martin Boyle and others from Brian D Grace, Engineering consultancy on behalf of the first party is summarised as follows:

- Site has been owned by the applicant since 1971 and is to the rear of his dwellinghouse.

- Applicant was of the view that the residents of The Oaks were in favour of the development of the site given that it is on waste ground with issues of anti-social behaviour and illegal dumping.
- Application developed to compliment the existing housing estate tidy up the waste ground in front of the Oaks
- Applicant wishes to work with the residents of the O
- Validation of the application and all procedures were in accordance with the Planning and development Regulations.
- Further information was requested which was duly submitted. Information requested was no considered significant therefore newspaper notice was not requested by the Planning Authority.
- Applicant willing to comply with the requirements of condition two. Request that the Board could re-examine the number of dwellings granted to allow the seventh house which would be in keeping with the density stipulated by the Council (20 units per hectare)
- Condition 3 in relation to boundary walling/ fences is standard condition
- As regards Condition 5 and legal agreement to connect to services owner and developer of the estate eager to see the site developed.
- Applicant has a right of access from the public road via the Millersbrook estate road.
- Residents of Millersbrook estate have applied to Tipperary County Council to have the estate taken in charge and this process is well advanced.
- Owners of the dwellings in the proposed development could be incorporated into any existing management company as part of their purchase agreement.
- Site is zoned existing residential and the proposal is in keeping with the principles objectives and vision of Tipperary County Council for the area.
- As regards access initial proposal for second access could alleviate third party concerns.

- Construction traffic will enter the site via the existing field gate off the main estate road and no construction traffic will use the Oaks road.
- The sewer connection from Mr Galvin's house to the Millersbrook sewer network is similar to service connections from the other houses within the estate. Any service pipe network within or crossing the application site will be addressed in the proposed new development and will not have any bearing on the properties in the Oaks or greater Millersbrook estate.
- Applicant is willing to comply with standard requirements as set out in conditions 11 and 13 and 22.
- Site has been designed in accordance with the "Recommendations for Site development Works for Housing Areas, November 1998" and all aspects of the Nenagh Town and Environs Development Plan.
- Applicant wishes to develop the site in agreement with the local residents and without any disturbance or nuisance to his neighbours.
- Issues raised are inaccurate, lacking good planning principles and in some case spurious.
- Respectfully request that the Board considers the issues raised and rejects the arguments.

## **7.2 Observer**

7.2.1 Submission by John Dore, Brooklands, Nenagh. His dwelling borders to the south west of the appeal site. While he has no objection in principle to the proposed development the observer's house is served by a septic tank and percolation area which is adjacent / partially within the application site. No agreement has been reached regarding access and maintenance.

## **7.3 Planning Authority Response to the Appeals**

7.3.1 The Planning Authority response is summarised as follows:

- Planning Authority in assessing the planning application has fully taken account of the issues raised by both appellants in respect of assessing services and infrastructure require to serve the proposal

and other consents that might be required from third parties in order to implement the development.

- Condition 5 states that the development may not commence until necessary legal agreements have been put in place with owners of adjoining infrastructure required to service the development as well as rights of access and way leaves.
- As regards condition 2 the planning authority considers that the revisions required under this permission are not such as to radically alter the overall development concept but are rather improvements to the layout which provide for an enhanced layout that has a better relationship to the existing nearby dwellings.
- Third parties have raised concerns about the number of conditions imposed however it is considered by the Planning Authority that these conditions are of a nature that do not prejudice third party rights and are necessary to regulate the implementation of the development.
- The Board is requested to uphold the decision of the Planning Authority.

## **8 ASSESSMENT**

8.1 Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the proposal and all submissions, I consider that the key issues arising in this appeal can be considered under the following broad headings.

- Procedural Matters and Adequacy of the application.
- Principle of development and impact on established residential amenity.
- Other matters.

### **8.2 Procedural Matters and Adequacy of the application**

8.2.1 I note that the third party appellants have questioned the procedures adopted by the local authority in terms of the extension of the period

allowed for submission of a response to the request for additional information and also on the basis that the first party was not compelled to submit revised public notices to indicated that “significant” further information had been submitted. The Planning Authority in response asserted that the further information was not deemed significant therefore revised notices were not necessary. I would observe that on the basis of the time lapse between the further information request and response a request for revised notices would be best practice however I note that the procedures adopted by the Planning Authority cannot be reviewed by the Board as any such review of administrative decisions is the preserve of the courts.

8.2.2 On the question of the first party’s legal entitlement to carry out the proposed works I note that the third party appellants have indicated that the first party has not gained nor indeed formally sought the agreement of Millersbrook Management Company with regard to connection to the existing infrastructural services. The submissions of the third party appellant parties refer to an ongoing legal challenge in respect of the ownership and management of access and site services pursuant to the Multi-Unit Development Act 2011. The First Party in response to the Council’s request for additional information 7<sup>th</sup> March 2016 submitted evidence of the agreement of the developer of the Millersbrook estate to the application. Details submitted included a copy of Land Registry Record Folio TY1893 which indicates right of way / wayleave over the Millersbrook service road. Notably no wayleave / right of way is apparent in respect of “The Oaks” spur road off which it is proposed to provide access to the appeal site. The First Party also indicates that the residents of the estate have applied to Tipperary County Council to have the estate taken in charge however the Planning Authority submissions are silent on this matter. Whilst the question of ownership is a legal issue, an applicant for permission is required under the legislation to demonstrate that they have a sufficient legal interest in the site or property to carry out the proposed development, or the written

consent of the person who has that legal interest. In my view the on the basis of the applicant has not demonstrated sufficient legal interest to make the application and has not complied with the legislative requirements in this regard. Having regard to the ambiguity in respect of the applicant's legal entitlements, I consider the application to be unsatisfactory.

8.2.3 I note that Article 23(a) of the Planning and Development Regulations 2001 as amended which sets out the requirements for plans drawings and maps to be contained within a planning application requires that *“(a) site or layout plan shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land which is subject of the application shall be outlined in blue and wayleave shall be shown in yellow.”*

8.2.4 I note that as outlined in the submission of the Observer, Mr John Dore, there is an existing septic tank and percolation area serving the observer's dwelling located adjacent to the south-western boundary of the site and I noted the septic tank on the date of my site visit. (Plate 7). The observer's submission asserts that the percolation area is partially within the appeal site. The third party appellants further note that a wastewater pipe serving the applicant's dwellinghouse traverses the appeal site. The site layout drawings submitted with the application do not acknowledge these existing services on and adjacent to the appeal site and the detail of the application makes no formal provisions in this regard. I would also observe that the site layout plan does not provide sufficient detail in terms of significant tree stands and other features along the boundaries of the site. On

the basis of the deficiencies in detail, I consider that the details lodged with the application are inadequate for the purposes of assessment of the proposed development in the context of the proper planning and sustainable development of the area. I note for instance potential prejudice to public health issues arising from inadequate separation distances from septic tank percolation area, as set out within the Wastewater Treatment Manuals, Treatment Systems for Single Houses, EPA 2000.

### **8.3 Principle of development and impact on established residential amenity.**

8.3.1 As regards the principle of development, the site is zoned existing residential and the proposal to provide residential development on the site is appropriate in terms of this zoning objective. Having regard to the character of the site as a gap site, the development of the site for residential purposes is appropriate.

8.3.2 As regards residential amenity impacts I consider that the site has sufficient capacity to provide for an adequate standard of residential amenity and to ensure that minimum separation distance from established dwellings are met. I consider that the development of the site will not give rise to a significant impact on established residential amenity. As regards the proposed layout the proposal draws largely from its context. I note that the proposed open space is incidental and of questionable benefit however the development plan standards requires a minimum 15% of site area with no apparent flexibility in regard to infill sites. As regards access, traffic and parking I consider that a single access as emerged in response to the request for additional information is appropriate.

### **8.4 Other Matters**

8.4.1 On the matter of appropriate assessment, having regard to nature and scale of the proposed development on fully serviced lands zoned for development and to the nature of the receiving environment and proximity to the nearest European site, it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European Site.

## **9.0 CONCLUSION & RECOMMENDATION**

9.1 Having read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising, I consider that based on the deficiencies in the application as outlined above, permission should be refused for the following reasons and considerations:

### **REASONS AND CONSIDERATIONS**

On the basis of the information lodged with the application and the appeal it is considered that the details and drawings submitted with the planning application and the appeal fail to accord with the requirements of article 22 and 23 of the Planning and Development Regulations, 2001. The Board is, accordingly, precluded from giving further consideration to the granting of permission the subject of the application and appeal.

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Brid Maxwell  
Planning Inspector  
5<sup>th</sup> August 2016