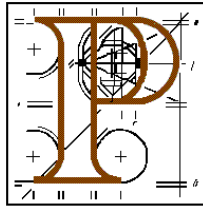


An Bord Pleanála



Inspector's Report

Development: Permission for amendments to a previously approved scheme Reg Ref. No. 03/1698 (ABP Ref. PL.09.207374) as subsequently amended by permissions Ref. No. 05/1697, 05/3052, 06/734, 06/2260, 09/1424, 09/1153 and 12/421.

The amendments propose modifications to the scheme layout by replacing a total of 121 no. permitted dwellings, numbered 1-32, Block G, Ryebriidge Grove comprising: 12 no. 2 bed type L units, 10 no. 3 bed type J Duplex units over 10 no. 2 bed type 1 ground floor apartments in a 3 storey block; and numbered 1-45, Ryebriidge View comprising the following 2 storey terraced dwellings: 11 no. 3 bed type A houses, 3 no. 3 bed type A1 houses and 7 no. 4 bed type A2 houses, 8 no. 3 bed type B houses, 3 no. 4 bed type E houses, 3 no. 4 bed Type E1 houses, 2 no. 4 bed type F houses and 8 no. 2 bed type K apartments in 2 storey blocks; and numbered 1-44 Ryebriidge Gardens comprising: 3 storey blocks containing 16 no. 3 bed type J duplex units over 16 no. 2 bed type 1 ground floor apartments and 12 no. 2 bed type L units, for a new arrangement of 72 no. 2 storey dwellings comprising 48 no. 3 bed type B1 semi-detached houses, 6 no. 4 bed type G semi-detached houses, 2 no. 4 bed type G1 detached houses, 8 no. 4 bed type G4 semi-detached houses, 6 no. 4 bed type G5 detached houses and 2 no. 4 bed type G6 semi-detached houses and with all houses containing on curtilage car parking and including modifications/realignment of the approved access roads/services to serve the new dwellings plus associated site development works including boundary treatments and landscaping works allocated on a 4.203ha (10.38 acres) site at the development now known as Ryebriidge, at Boycetown, Commons East, Kilcock.

Planning Application

Planning Authority:	Kildare County Council
Planning Authority Reg. Ref.:	15/595
Applicants:	Merlon Development Ltd.
Type of Application:	Permission
Planning Authority Decision:	Grant Permission

Planning Appeal

Appellant: Thomas Droney

Type of Appeal: Third Party V Grant

Observers: Abbeyfield Residents' Association
Darren and Katja Nolan
Matt and Julieanne Hooper
John and Lisa O'Neill
Daniel McSweeney
Mark and Catriona Slaughter & Others
Stephen Hand
Eddie Mallin

Date of Site Inspection: 26th July 2016

Inspector: Joanna Kelly

Appendices:

Appendix 1 Site Location Map

Appendix 2 Photographs and Site key Plan

1.0 INTRODUCTION

This appeal pertains to a third party appeal against a condition contained in the notification of a grant of permission from Kildare County Council for a housing development in Kilcock.

2.0 SITE DESCRIPTION

- 2.1 The appeal site has a stated site area of c. 4.203 hectares and is located on the northern fringes of the settlement of Kilcock. The appeal site is an irregular rectangular shape with the River Rye to the northern section. The appeal site is currently accessible via Ryebribe residential development off the Summerhill Road (R-158).
- 2.2 The appeal site is currently fenced to prevent access. There is an access road in place and it would appear that the site was used as a means of accessing lands further east when they were developed.
- 2.3 The Board should however that the appeal in this instance pertains to a condition requiring the provision of an access located between the properties of no. 25 Ryebribe Rise and the appellant's property at no. 59 Abbeyfield estate. There is currently a timber fence within Abbeyfield at this location. There is open space either side of this fence line, however there is a difference in levels with a plinth and fence provided on the Ryebribe Rise development boundary. There are also ESB installation and what appears to be a water meter cabinet at this location.
- 2.4 There is an existing childcare, health centre and gym located along the R-158 which appears to have been developed in the first phase of the development within Ryebribe estate. Works have been recently carried out to upgrade the footpath from Ryebribe along the R-158 in the direction of the village i.e. along the R-148. The linear park along the River Rye has been developed and provides both footpaths and cycle path along its course.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1 The proposal involves amendments to a previously permitted residential development of 121 houses whereby the applicant is now seeking to construct 72 no. dwellings which are either detached or semi-detached units. The dwellings are two storey with some having the ability to be easily converted to three storey if so required.

4.0 TECHNICAL REPORTS

4.1 Planning report

The first planning report recommended a further information request in relation to revision of house types; variance in design and finishes; details of

boundary treatments; details in respect of traffic and DMURS. The subsequent report recommended a grant of permission subject to conditions.

4.2 Water Services

Further information required in respect of compensatory flood water details, details of storage tanks and SUDS.

4.3 Senior Executive Engineer – Transportation Department

Applicant to review proposed plans in light of DMURS and the need for greater permeability through the development.

Chief Fire Officer

No objection

Environment Report

No objection subject to condition

Irish Water

No Objection

5.0 PLANNING AUTHORITYS DECISION

The Planning Authority granted permission for the proposed residential scheme subject to 51 conditions. Of relevance to this appeal is condition 30 which is as follows:

Prior to commencement of development, the developer shall submit full drawings and details for agreement with the Planning Authority, for the provision of a footpath connection at the turning area of Ryebriidge Rise to Abbeyfield Estate. This shall include details of the proposed connection including footpath design, landscaping and entrance details i.e. piers at Ryebriidge Rise wall.

7.0 APPEAL GROUNDS

7.1 The First Party appeal grounds are summarised as follows:

- The appellant is the owner and occupier of 59 Abbeyfield, Kilcock. His house adjoins the boundary of Ryebriidge Estate.
- Condition 30 provides for the provision of a footpath connection at the turning area of Ryebriidge Rise to Abbeyfield Estate which is located beside his family home.

- The appellant sets out that he purchased his house as an end house in front of a secure green with only one access into the estate and residents from the front of the estate bring their children to the green space to play which has greatly added to the integration of children and residents and has helped build a strong sense of community in the estate.
- The appellant highlights that there has been no anti-social behaviour in the estate over the last 20 years and remarks on the existing quality of life and enjoyment of the living conditions at this house.
- It is set out that if an access to a pedestrian walkway is created into Abbeyfield in front of his house he believes the significant positive living outcomes will be greatly reduced such as devaluation in his home; reduction in security for children; reduction in integration; reduction in the use of amenity space; increase in noise pollution and criminal damage.
- Residents were not aware of the footpath as it was included as a condition.
- The implementation of a walkway directly in front of the appellant's house will make his driveway virtually unusable. There is a five foot wall which bounds the Ryebidge side of his driveway and there is no line of sight for the appellant or passer-by to safely see each other in time to prevent accidents.
- The appellant makes a point that a linear pedestrian, cycle and walkway along the Rye Water was designed by the applicant to facilitate connection for residents of Ryebidge with the centre of the town. These facilities were part of the grant of permission by the Council and upheld by ABP. This connection has not been completed by the Developer which has increased the pressure for access into Abbeyfield. It is suggested that this piece of estate infrastructure be built and completed before any further modifications or building of units in Ryebidge. A new Supervalu is almost built at the termination point of the proposed linear walk and cycle path. The original permission required the provision of a neighbourhodd store for residents because of remote access from the town of Kilcock. The developer has failed to deliver this store and the unit is now a small gym.
- The existing infrastructure on the Ryebidge side of the proposed access is blocked by a large ESB transformer and is at least 4 feet below the level on the Abbeyfield side.
- Reference is made to further amended applications granted by the Council and the appellant can find no evidence of any of them having details or full drawings for access

8.0 OBSERVORS

8.1 Abbeyfield Residents' Association

The pertinent planning issues are summarised as follows:

- The residents objected 11 years ago to the possible walkway from Ryebriidge Estate. The Abbeyfield estate is now a 20+ year old settled estate with a high proportion of children.
- The residents had no idea that a request for a walkway had been submitted by Ryebriidge Residents' Association and that permission had been granted.
- It is set out that if the developer had built what was in the original planning permission from Balfeaghan Bridge to the west to Mill Lane to the East and put in a shop this would not now be an issue.
- Connecting Abbeyfield to another 400+ houses will impact negatively on residents. The estate will become a 'rat run' for pedestrians/cyclists and motorbikes.
- The walkway will leave an opening for young children to wander through Ryebriidge to the very busy Summerhill Road. The proposal will compromise the security of the entire estate.
- It is requested that the Board determine that condition 30 be removed from the grant of permission to ensure that the quality of life and enjoyment of their homes and surroundings are maintained.

8.2 Darren and Katja Nolan

Matt & Julie-Anne Hooper

John and Lisa O'Neill

Daniel McSweeney

Whilst these are four separate submissions the issues raised are similar and have been summarised as follows hereunder:

- The public notices fail to mention the nature of changes to the boundaries of the Abbeyfield Estate.
- A site notice was not placed in the vicinity of the proposed boundary alterations.
- The proposed access routes will impact on the security of the estate which only has one entrance and exit point which is in close proximity to the Kilcock Garda station.
- The proposed access routes will change the nature of the green spaces for many of the residents of the estate. The open green area opposite No. 59 is a safe confined space and is enjoyed by many of the younger children of the estate. The opening of the boundary will remove this aspect of the space and thus affect its utilisation and enjoyment by young families.
- There is concern that motorbike traffic may utilise the new access point as a shortcut between R148 and R158 (and vice versa) particularly when commuter traffic is busy at the junction.

- Consideration should be given to the recent investment by the Council in new pedestrian footpaths along the R148 between Ryebridge and Kilcock village. The development has greatly improved pedestrian access between Ryebridge and Kilcock village.
- The appeal of Mr. Thomas Droney highlights several aspects of the proposal which will be detrimental to the residents of Abbeyfield such as safety and quality of life.
- It is requested that Condition 30 be removed from the grant of permission.

8.3 Mark and Catriona Slaughter and Others

- The submission is made on behalf of the residents of 51,52, 54 and 56 Abbeyfield.
- The road serving these dwellings is currently a cul-de-sac with a green area which is enclosed. Should permission for access to the street from Ryebridge Estate be granted the safety of the green area would be compromised.
- Providing a through road will erode the sense of community and a safe environment and discourage Abbeyfield residents from allowing their children to play outside.
- The design and orientation of the estate has meant that Abbeyfield has been fortunate not to have suffered any major criminal or anti-social behaviour. Reference is made to the consensus that access/egress points, alley ways and laneways between estate and through estates have historically been shown to be a focal or hot-spot for youths to gather and engage in anti-social behaviour.
- The increase in footfall and motorists will lead to higher noise levels and anti-social levels which will be more noticeable at night time and weekends.
- The proposal would have a serious monetary value on the homes in Abbeyfield. A change to the security of the estate will make it a less desirable place to live.
- The Council has only recently installed and upgraded footpaths from the Enfield/Summerhill Road junction to the town centre serving the needs of residents in Ryebridge Estate. Map 7 of the Kilcock Area Plan 2015-2021 shows a proposed walk way alongside the Rye River to the centre of the town. This walk way also formed part of the original plans for Ryebridge estate submitted by Merlon Developments some 10 –12 years ago to provide an alternative route for residents of Ryebridge to the town centre. This alternative route has not been completed by the developer in all this time and yet the developer continues to build without providing the original infrastructure promised. It is suggested that this piece of infrastructure (the walk way along the Rye River) be completed before any further considerations or modifications are made that have potential to negatively affect the residents' of Abbeyfield.

8.4 Stephen Hand (co-signed by residents of no. 25, 26,27, 30, 32 and 34 Ryebriidge Rise)

- Concerns are raised that the opening between the two estates will increase the likelihood and risk factor of someone being knocked down by car entering or exiting their drive way either side of this proposed opening as this route is very close to the drive way at 25 Ryebriidge Rise and the opposing house in Abbeyfield contributing to a major blind spot.
- The opening will put residents' safety and welfare at greater risk and will become a black spot for teenagers hanging around and the security issue will directly affect homes in Ryebriidge Rise.

8.5 Eddie Mallin

- The Council has completed a major project delivering a new and upgraded footpath connecting Ryebriidge Estate to Kilcock Village, and dealt with some safety issues around the exit of Abbeyfield Estate.
- Abbeyfield is a much smaller estate than Ryebriidge and the increased volume of pedestrian and cycle traffic would be very disruptive.
- The current restricted single entrance to both estates gives up the best opportunity to protect children and existing homes.
- It is requested that Condition 30 be removed from the permission.

9.0 **RESPONSES**

9.1 First Party response to Third Party Appeal

The pertinent issues contained in this submission are summarised as follows:

- The issue of the proposed link between Ryebriidge and Abbeyfield Estates was addressed by ABP in Condition 2(d) of the parent permission PL.09.207374. It is set out that ABP saw permeability to be an important aspect of the development in relation to its broader context and in the overall interest of traffic safety and residential amenity.
- It is submitted that it is difficult to understand ABP's decision to make an order under section 37 (6) of the planning acts as amended in granting Mr Droney leave to appeal when the primary subject matter of the appeal was addressed by ABP in its 2005 decision under condition 2 (d).
- The first party is not sought this link between the estates at any stage however is happy to facilitate the Council in trying to achieve greater permeability and safer pedestrian routes for the children in the area.
- The first party are not aware of the status of ownership of the boundary wall between the estates nor if the Abbeyfield estate has been taken in charge however both of these issues would, need to be clarified and resolved to allow the link to be formed.

- There are possible alternative locations for the link further north along the boundary between the two estates which would move the link away from Mr. Droney's house and towards the open space which may help to mitigate any safety issues.
- With regard to compliance with condition 2 of PL.09.207374 it is confirmed that a compliance submission was made to the Council stating that *"the boundary treatment to the adjoining open space of the neighbouring scheme to the east (The Sycamores) to be a railing on a plinth wall with a gated opening"*.
- A further compliance submitted in respect of this condition was issued on the 12/12/2005 clarifying that the previously submitted drawings *"...show the location for the intended access link to the adjoining scheme adjacent to house No. 25 Ryebriidge Rise"*.
- Reference is made to a memo between staff members of the Council stating that the linkage between the two estates was not desirable due to anti-social activities and security issues that arise from such linkages. A subsequent letter from a Senior Executive Officer confirmed that the proposed linkage was not desirable. (copies attached to response submission).
- It is urged that the Board dismiss the third party appeal and uphold the grant of permission including condition 30 to allow for badly needed development of the site to continue.

10.0 PLANNING HISTORY

Whilst there are a number of applications on the landholding, the file of direct relevance to this appeal is as follows:

File ref. No. 03/1698 Permission granted to Merlon Development Ltd. by the planning authority and upheld on appeal for the construction of 454 residential units. The Board should note that this appeal site pertained to an area of 16.82 hectares and relates to the entire area indicated in blue in this appeal. This permission acts as the parent permission for the overall site. This permission was extended under File Ref. No. 09/1153 up until 6th October 2012. A further extension of the appropriate period was permitted under File Ref. 12/421 until 6th October 2017.

11.0 PLANNING POLICY

11.1 Smarter Travel – A sustainable transport future, a new transport policy for Ireland 2009-2020.

This document sets out five key goals as follows:

- To reduce overall travel demand;
- To maximize the efficiency of the transport network;

- To reduce reliance on fossil fuels;
- To reduce transport emissions;
- And to improve accessibility to public transport.

11.2 Design Manual for Urban Roads and Streets

This manual provides guidance relating to the design of urban roads and streets. It provides that the Design Manual for Roads and Bridges will not henceforth apply to urban roads and streets other than in exceptional circumstances. The manual seeks to address street design within urban areas and sets out an integrated approach. The Manual seeks to put well-designed streets at the heart of sustainable communities. It seeks to slow traffic speeds through understanding and addressing driver behaviour.

11.3 Regional Planning Guidelines, Greater Dublin Area 2010-2022

Kilcock is identified as a moderate sustainable growth town in the Regional Planning Guidelines. Kilcock's role as a Growth Town is to act as an important self-sustaining regional economic driver for the GDA and to achieve a more compact urban form.

11.4 Kildare County Development Plan 2011-2017

The CDP identifies Kilcock as a Growth Town within the Metropolitan area.

Chapter 4 deals with housing and Chapter 15 of the CDP provides Urban Design Guidelines.

11.5 Kilcock Local Area Plan 2015-2021

The local area plan shows that the zoning objective pertaining to the site is "existing residential and infill". Section 13 relates to "Sustainable Neighbourhoods".

12.0 **ASSESSMENT**

Having examined the file, relevant history files, considered local and national policies, inspected the site and immediate environs, assessed the proposal and all of the submissions on file, I consider the key issues to be:

- Nature of proposed amendments
- Appropriateness of Condition 30

12.1.0 **Nature of proposed Amendments**

12.1.1 The proposed development relates to an amended residential layout for a previously permitted area that formed part of PL.09.207374. The area in question is approx. 4.203 hectares and is the central most part of the overall landholding. The proposal is seeking to replace the previously permitted 121 units in this area with 72 dwellings. The road layout is generally as per the

previously permitted layout. House types now proposed consist of semi-detached and detached units and the design of the units were amended in response to further information from the Planning Authority so as to address passive surveillance at junction/edge locations. The applicant indicated that the layout has responded to the requirements of DMURS by providing “home zones”. The treatment of the junction of the spur roads with the access road is highlighted by a change in materials and by a narrowing of the carriageway for traffic calming purposes. I consider that the layout is acceptable and that the proposed house design is such that would offer future residents a reasonable standard of accommodation given the internal functional layout of the units and space provided within each. Rear amenity space is considered satisfactory and is generous particularly in the larger units. The previously permitted car parking areas have been omitted and I consider that the new layout would offer a more pleasant environment for future residents. It is noted that no public open space has been provided within the cul-de-sacs where dwellings are to be located however the continuation of the linear park with cycle ways along the River Rye will ensure adequate and pleasant public open space for existing and future residents.

12.1.2 With regard to traffic I note that a TIA was submitted by the applicant in response to the request for an assessment of the T junction where the R148 meets the R158. The proposal is considered acceptable with regard to traffic and road safety. The Board will be aware of flooding concerns arising from the River Rye which is located along the northern section of the site. These concerns were addressed in the parent permission and permission was subsequently permitted for the overall development of the landholding. It is therefore not considered that the proposal would give rise to any further concerns in this regard.

12.1.3 Given the nature of the proposed development, i.e. modifications of a permitted residential development; the reduction in housing units to be provided; the serviced nature of the lands; nature of the receiving environment and proximity to the nearest European site, (the Rye Water Valley) 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.

12.1.4 Having considered the appeal submissions, reviewed all of the documentation and plans submitted, the proposed development is considered to generally accord with the provisions of the local area plan and accords with the proper planning and sustainable development of the area. Having regard to the nature of the condition appealed, a condition requiring the provision of a pedestrian link outside the area where the amended housing units are to be provided, I consider that the determination by the Board of the relevant

application as if it had been made to it in the first instance would not be warranted. Therefore the appeal should be decided in accordance with section 139 of the Planning and Development Acts as amended. As provided for under section 139 (2), apart from considering the condition to which the relevant appeal relates, the Board shall be restricted to considering-

- (a) the matters set out in section 34 (2) (a), and
- (b) the terms of any previous permission considered by the Board to be relevant.

12.2.0 Appropriateness of Condition 30

12.2.1 The wording of condition 30 the subject of this appeal is as follows:

“Prior to the commencement of development, the developer shall submit full drawings and details for agreement with the Planning Authority, for the provision of a footpath connection at the turning area of Ryebriidge Rise to Abbeyfield Estate. This shall include details of the proposed connection including footpath design, landscaping, and entrance details, i.e. piers at Ryebriidge Rise wall.

Reason: *To improve permeability through the proposed development to existing housing, school and local amenities in the adjoining area.*

As already set out heretofore, the application seeks to amend a previously permitted development under File Ref. No. 09.207374. The planning authority in their further information requested that the applicant provide a pedestrian and cyclist link from Ryebriidge Estate to existing Abbeyfield estate through the turning area at Ryebriidge Rise to improve permeability through proposed and existing housing to school, village and local amenities. The location of the pedestrian link as proposed by the first party is at the boundary of no. 25 Ryebriidge Rise and no. 59 Abbeyfield, notably outside the confines of the appeal site in question. No revised public notices were submitted indicating that this new access is to be provided. I do therefore consider, notwithstanding the voluminous submissions made to this appeal, that third parties were not given adequate notification of the nature and extent of the proposed development, notably the provision of an access on lands outside the red-line boundary. Indeed, the appellants in this instance were successful in being granted leave to appeal.

12.2.2 The Planning Authority in their request for further information appears to have been responding to a submission made by residents within the Ryebriidge estate for such access to be provided in the interests of permeability and accessibility to services and amenities. By way of background, the grant of permission pertaining to PL.09.207374 (parent permission) included Condition

2 which provided for modifications to the layout and section (d) of this condition provided:-

(d) Proposals determined by the Planning Authority to be desirable in order to facilitate pedestrian and cycle access to Kilcock village through existing residential development to the east.

Reason: *In the interest of traffic safety and residential amenity.*

Therefore the provision of such accesses and linkage pertaining to the overall landholding as indicated in this appeal is considered to be an issue of compliance relating to the parent permission. It would appear that the Planning Authority is seeking to impose a condition in this instance which addresses the issue of non-compliance with a condition of a previous permission.

12.2.3 The Abbeyfield estate is a long established estate. It is unclear whether the applicant in this instance ever owned the lands within Abbeyfield. It is also unclear if the lands within Abbeyfield and indeed the developed portion Ryebridge have been taken in charge. The reason for mentioning this is that the applicant may not have sufficient legal interest to ensure delivery of the access and indeed mentions this very fact within the response to the appeal.

12.2.4 The requirement for this access appears to be an emotive issue for all residents with some seeking its provision and others vehemently opposed to such. The applicant has indicated in his response to the appeal that a compliance package was submitted to the Planning Authority in respect of PL.09.207374. In this regard, a letter dated 12th December 2005, along with plans were submitted indicating the location for the intended access link to the adjoining scheme adjacent to house no. 25 Ryebridge Rise. A letter from the Planning Authority dated 18th April 2006 in response to Condition 2 (d), sets out that *"...any proposed linkages between the development and the existing residential development to the east would not be desirable, given the likely anti-social activities and security issues which such linkages tend to create."* It would seem that no further efforts were made to comply with Condition 2 (d) of the parent permission and it is questionable as to whether any such linkages were required on foot of this letter from the Council so as to comply with the wording of the condition.

12.2.5 The Development Management, Guidelines for Planning Authorities, 2007 set out basic criteria for conditions. These include whether the condition is necessary; relevant to planning; relevant to the development permitted; enforceable; precise; and reasonable? The location of the proposed access is outside the confines of the appeal site and it is unclear if the applicant has sufficient legal interests to ensure delivery of the access. I therefore tend to the view that the condition is *ultra vires* and would question its enforceability.

In any event, the inclusion of Condition 30 in the notification of the grant of permission is unnecessary as it does not pertain to the appeal site or relate directly to the development before the Board. It would appear to be an attempt to retrospectively deliver an access required under a different permission and as such cannot be considered reasonable or relevant to the development permitted.

13.0 CONCLUSION AND RECOMMENDATION

Having considered all of the information on file in respect of the modified development and the nature of the appeal and all of the submissions and details pertaining to Condition 2 (d) of the parent permission PL.09.207374, I consider that the issue before the Board is a matter of compliance. Condition 30 is not relevant to the permitted development and as such is unnecessary and unreasonable in the context of the modifications sought.

It is recommended that the Planning Authority be directed to **REMOVE** Condition 30.

REASONS AND CONSIDERATIONS

The Board considered that Condition 30 should be removed as the wording of the condition provides for an access at a location removed from the appeal site, on lands previously granted permission for residential development under PL.09.207374 and where Condition 2 (d) of said permission requires such linkages to be provided. Therefore, the inclusion of condition 30 in this instance is not relevant and is therefore considered unnecessary and unreasonable in this instance.

Joanna Kelly

Inspectorate

28th July 2016