



An  
Bord  
Pleanála

## Inspector's Report

**PL27.247036**

### Development

Decommissioning of existing temporary septic tanks, connection of houses to public sewer, construction of 4 no. dormer houses connected to foul sewer on previously approved sites, all works at Hazelwood, Johnstown, Kilpedder, Co. Wicklow.

### Planning Authority

Wicklow County Council

### Planning Authority Reg. Ref.

16/526

### Applicant

Harkdale Ltd

### Type of Application

Permission

### Planning Authority Decision

Refuse permission

### Appellant

Harkdale Ltd

### Observer

William Kelly

### Date of Site Inspection

7<sup>th</sup> November 2016

### Inspector

**Mairead Kenny**

## 1.0 Site Location and Description

1.1.1. The application relates to two separate plots of land within a small residential cul de sac off Hazelwood Avenue, Johnstown which is at the northern end of Kilpedder village in north Wicklow. Kilpedder is close to the N11. It has been subject to relatively limited residential development in recent decades and contains very little in the way of community or commercial infrastructure. The residential cul de sac in which the site is located presently contains 4 no. dormer style houses and vacant plots, including one where development has commenced. The small development on completion would contain 10 no. plots. There is a central open space which is under grass. The estate would be described as completed insofar as there are footpaths, lighting and grass verges with tree planting.

1.1.2. The appeal relates to 3 no. adjoining residential plots (sites 7, 8 and 9) and at the opposite side a single plot (site 4). The sites are undistinguished in terms of boundary features or otherwise but in general would be described as overgrown and lacking maintenance. The information on the application file indicates that the sites contain septic tanks associated with existing houses. One of the plots, no. 4, was not accessible to me. In terms of boundary treatments the boundaries between no. 9 and the existing house at no. 10 and between no. 4 and the existing house at no. 5 were defined by high evergreen hedgerows.

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

## 2.0 Proposed Development

2.1.1. Permission is sought for a development which consists of:

- Decommissioning of temporary septic tanks serving sites 5, 6 and 10 permitted under reg. ref. 00/2741
- Connection of houses on those sites to the existing public foul sewer

- Construction of four dormer bungalows comprising 3 no. type A dwellinghouses (261m<sup>2</sup>) and 1 no. type B dwellinghouse (276.5m<sup>2</sup>) with connection to existing public foul sewer – at previously approved sites 4,7,8 and 9
- Site works.

## 3.0 Planning History

3.1.1. Under **Reg. Ref. 00/2741** permission was granted for site works for 10 no. houses and for the construction of 4 no. dormer bungalows, garages and temporary septic tanks.

3.1.2. Under **Reg. Ref. 05/2684 / PL.27.212995** permission was granted for :

- the decommissioning of the septic tanks serving sites 5,6 and 10 and their connection directly to the sewer and for connection of site 1 to the sewer by way of a primary settlement tank located in site
- construction of six dormer bungalows and connection to the existing public foul sewer via primary settlement tank and on site drains on sites 2, 3, 4, 7, 8, and 9.

3.1.3. In determining the first party appeal against conditions 7 and 8 the Board directed the planning authority to attach the conditions. Both conditions relate to connections to the public foul mains and to the phasing of the development pending commissioning of the planned Regional Sewerage Plant at Leabeg. Leabeg is south of Kilcoole. This is a reference to a previous proposal for a Newcastle Regional Scheme, plans for which had been abandoned by 2010.

3.1.4. In the appeal two other conditions were considered – the Board upheld the requirement that the development comply with requirement that it serve local growth and directed the planning authority to dismiss the condition relating to Part V as this was not relevant to unzoned lands.

3.1.5. Under **Reg. Ref. 10/2254** permission was granted for decommissioning of existing temporary septic tanks serving sites 5, 6 and 10 permitted under reg. ref. 00/2741 and for connection of these houses to the public sewer and for construction of 4 no. dormer bungalows with detached garages and connection to the public sewer at sites 4,7,8 and 9.

3.1.6. Condition 6 required that no development at units 4,7,8 and 9 commence until the contracts for the upgrading of the Greystones Waste Water Treatment Works have been signed and construction work on the pumping stations at Kilpedder and Farankelly Road and associated pipework and the Greystones gravity system has commenced.

3.1.7. Condition 7 required that no sewerage connections of houses 5, 6 and 10 and no occupation of units 4,7,8 and 9 take place until the Water Services Authority has confirmed in writing that the upgraded Greystones plant is operational and the pumping stations at Kilpedder and Farankelly are operational.

3.1.8. **Reg. Ref. 10/2368** refers to sites 1, 2 and 3 including a connection to the public sewer. Permission was granted subject to conditions which are similar to conditions 6 and 7 of reg. Ref. 10/2254.

3.1.9. **Reg. Ref. 15/90** refers to an application for a single house at site 2 and decommissioning of a septic tank at site 1 and connection of both to the public sewer. Permission was granted on 20<sup>th</sup> March 2015 without restrictions on date of occupancy. Condition 5(b) noted that the permission does not commit WCC to the provision of water services.

3.1.10. **Reg. Ref. 16/526** refers to changes to a previously approved house design at sites 2 and 3. This is an amendment to Reg. Ref. 15/90.

## 4.0 Planning Authority Decision

### Planning and Technical Reports

- 4.1.1. **Assistant Planner** notes the similarity to the permitted development in terms of design, layout, parking, open space etc and that there are no new issues of visual or residential amenity arising in relation to the proposed development. Two dwellings were permitted under reg. ref. 15/90 in the absence of any holding condition following consultation with IW. Having regard to the report received from IW in relation to this application refusal of permission has been recommended as the proposal would have a detrimental impact on the assimilative capacity of the Kilcoole stream, the cost of wastewater treatment and the potential to provide additional capacity at a reasonable cost.
- 4.1.2. A hand written note by the **Senior Engineer** indicates agreement to the above. It would appear from the IW report that there are no plans within the lifetime of a permission to upgrade the Kilpedder Treatment Plant.
- 4.1.3. **Senior Executive Engineer** report states that roads and surface water related issues previously dealt with under reg. ref. 10/2254 and permission should be granted.

#### **Other reports**

- 4.1.4. **Inland Fisheries Ireland** indicates no objection to the application subject to confirmation from Irish Water that the necessary improvement have been completed at Kilpedder Wastewater Treatment Plan to ensure compliance with EPA licence D0416-01.
- 4.1.5. **Irish Water** indicates that the discharge would have a detrimental impact on the assimilative capacity of the Kilcoole stream water body impacting on the cost of wastewater treatment at the Kilpedder WWTP and the potential for IW to provide additional capacity at reasonable cost to cater for future development. The development would be prejudicial to IW's ability to meet the needs of the CER with respect to providing water services in an economic and efficient matter as required under the Water Services Act 2013.

## Observations

4.1.6. **Martin and Sinead Doyle** of Johnstown Avenue Kilpedder made observations in relation to overlooking, tree protection and connection to the sewer which has been refused to them on different occasions between January 1998 and May 2016. They state that they sought connection to the mains prior to their application and that they should be connected before the applicant. An enclosed letter includes one dated January 2011 to WCC refers – this references a letter from the Council in relation to the new Code of Practice, EPA 2009 and on foot of that a request for a connection to the foul sewer.

4.1.7. Concerns in relation to the development are expressed by **William Kelly** of Johnstown Avenue who states that the development involves transferring the waste from an additional 7 no. homes onto an old system which is currently overloaded and includes a very old holding tank.

## Decision

4.1.8. The planning authority decided to **refuse permission** for reason of existing deficiency in the sewerage facilities and the lack of assimilative capacity of the outfall stream, which is unlikely to be made good within the lifetime of the permission.

## 5.0 Grounds of Appeal / Observations

### Grounds of Appeal

5.1.1. The main points of the first party appeal are:

- The decision is unfair - there is positive planning history, which was thoroughly researched and consultation was undertaken with the planning authority and Irish Water before purchase
- The decision was unnecessary as capacity shortcomings are being addressed and Irish Water has confirmed that works will be complete at end of Q3 2016

- The applicant has been advised by IW that connection would be given on a first come first served basis – this development may be pushed to the end of the queue even though permission was secured in 2010
- The report of the planning department indicates that there is an available PE of 163
- The extant permission 14/1858 cannot be acted upon as circumstances are changed in relation to condition 6, which is outside the control of the applicant
- As part of detailed communications with the Senior Design Engineer of Irish Water the advice was that upgrade works were due for completion by the end of Q3 in compliance with the urban Waste Water Treatment Directive in relation to BOD and suspended solids and include provision for additional capacity
- After commissioning a period of verification performance is required to ensure compliance with the licence for the plant and there would be spare capacity post-commissioning which would be allocated on a first come first served basis
- Further aspects of the consultation with IW and with the planning authority are outlined
- The applicant has no objection to the attachment of a condition requiring written confirmation from the planning authority or IW stating that no development commence until verification is received that the plant is operating satisfactorily to cater for the additional development proposed
- Compliance with the condition of the extant permission 10/2254 is the reason for making this application – this arises due to matters outside the control of the applicant and relates to a decision by IW not to connect small plants like Kilpedder to an upgraded Greystones Waste Water Treatment Plant
- No such condition was attached to the decision under 15/90 and IW raised no objection in relation to the connection of house 1 and sites 2 and 3 to the Kilpedder WWTP – the report of IW states that there is no objection and the

planner's report stated that the three houses can be accommodated without issues of capacity based on information from IW

- The remaining capacity at Kilpedder WWTP is limited to less than 25 units the site was purchased on the basis that there was space capacity and having received a connection offer from IW
- The Board is requested to grant permission and address the matter by condition as outlined above.

5.1.2. There are a number of enclosures including :

- A letter from WCC to the applicant dated November 24<sup>th</sup> 2015 stating that improvement works will allow a small number of additional dwellings (circa 25 no.) to be added to the Kilpedder WWTP which connection will be done on a first come first served basis – the application for the proposed dwellinghouses at sites 4,7,8,9 should be made as soon as possible
- Details of the connection offer which indicate validity for a period of 3 months from 25<sup>th</sup> January 2015
- Specific connection conditions document of IW for the existing houses 5, 6 and 10 and for new houses 4, 7, 8 & 9 in relation to which condition 6 of planning reference 10/2254 is referenced.

## Observations

### William Kelly

5.1.3. There is insufficient sewerage facilities for any additional homes to be connected to the 'already overloaded here in Kilpedder' (*sic*). Development would be contrary to public health and proper planning.

## 6.0 Responses

### Planning Authority response



6.1.1. There is no plan in place to upgrade the Kilpedder Wastewater Treatment Plant at present. The previous permissions were granted with a holding condition on the basis of a plan at that time for transfer to a pumping station near the N11 and onto Greystones Treatment Plant – condition 6 of 10/2243 refers. The main issue was a requirement to bypass the receiving waters which were of seriously substandard assimilative capacity. This would be achieved by the connection to Greystones. It is difficult to understand how IW or WCC could have indicated that issues at Kilpedder were about to be resolved – a connection could not be granted where a serious pollution risk existed. The planning authority has consistently advised that the Kilpedder plant was closed for additional connections. Any indications that may have given comfort to the applicant to purchase the site are not relevant planning considerations. The planning authority could not grant permission other than with a relevant holding condition. The decision to refuse was based on the fact that IW did not indicate that any upgrade of the system was planned within the lifetime of a permission and connection of Kilpedder to Greystones is not a short to medium term project.

### **Irish Water response**

6.1.2. The Kilpedder Wastewater Treatment Plant is 5.3km upstream of the Murrough Wetlands SAC and is currently non-compliant with the UWWTD and the ELVs for the discharge licence. The upgrade design does not include any provision for additional capacity although some additional capacity will be achieved, That can only be determined following commissioning and resultant performance monitoring. The connection offer made in January has expired and no further connection offers will be made until such time as the available capacity at the treatment plan can be confirmed. It may be appropriate that a grant of permission would be conditional on capacity at the treatment plant being confirmed before the development can be connected to the public sewer network. A development may not be connected to the network without a valid connection agreement.

### **First Party comments**

6.1.3. The applicant is fully aware that the plans to pump to Greystones are not going ahead for the foreseeable future and this was the main reason for the application being made. It was the planning authority in the first instance that advised the applicant in relation to Irish Water upgrading works which were being implemented to improve the Kilpedder WWTS and the Council had identified a P.E. of 163 remaining from a plant design of 600 P.E. There has been little communication between WCC and IW and if the planning authority had been furnished with the full details from IW on the upgrading works including a timescale in the first instance then a holding condition would have been forthcoming in a grant of permission. We understand that the issues at the plant are being fully resolved and that the design capacity of 600 P.E. has not been reached. While we accept that IW have altered their position in relation to the issue of connection offers to the treatment plant we also note that the plant has been upgraded and that some capacity exists given that the system was designed for a P.E. of 600 and has 163 P.E. remaining. The applicant is anxious that the proposed development be accommodated within the existing capacity at the treatment plant. The applicants have no objection to the imposition of a holding condition given the long planning history on the site within an existing unfinished small development of houses where all services are in place. In these unusual circumstances we believe that it would be appropriate to grant permission with a holding condition. It is fairly clear from the response letter of IW that capacity will become available however while we do understand the reluctance on their behalf we equally welcome their final paragraph indicating that it may be appropriate that a grant of permission would be conditional on capacity at the treatment plant being confirmed before the development can be connected to the public sewer network. Having regard to the extant permission, the previous connection offer and the confirmation from IW that a holding condition may be appropriate in the instant case we request that permission be granted.

## 7.0 Policy Context

7.1.1. Kilpedder is designated as a Level 7 settlement (large villages) which is the lowest tier in the hierarchy. The site is within the development boundary. AN indicative housing growth target for Kilpedder-Willowgrove for the period 2011-2022 is 20 units.

7.1.2. There is an objective for the provision of employment uses at the Kilpedder Interchange in relation to which (as well as the wind energy policy) the Minister has issued a draft Direction and the plan is described by the planning authority as an interim document.

## **8.0 Assessment**

8.1.1. I consider that the two substantive issues arising in this case relate to wastewater treatment and Appropriate Assessment.

8.1.2. I note that third parties raise matters related to residential amenity including overlooking, tree protection and boundary treatment. Following inspection of the site I consider that there are no substantive issues in this regard and consider that subject to standard conditions the residential amenities of the area would not be adversely affected.

### **Wastewater treatment**

8.1.3. In relation to the proposals for wastewater treatment I have provided lengthy summaries above of the positions of IW, the planning authority and the applicant.

8.1.4. The current application has come about in view of the conditions previously attached which required that development be restricted pending signing of the contracts for the upgrading of the Greystones Waste Water Treatment Works and pending commencement of construction work on the pumping stations at Kilpedder and Farankelly Road and associated pipework and the Greystones gravity system. The connection of the Kilpedder plant to Greystones is no longer being pursued.

- 8.1.5. There is a positive planning history and an extant permission for completion of the estate through infilling of the vacant plots, which is desirable. The main barrier to completion of the residential scheme is the wastewater infrastructure. IW indicate that the Kilpedder Wastewater Treatment Plant is currently non-compliant with the UWWTD and the ELVs for the discharge licence. An upgrade is underway and completion is imminent and may indeed have recently occurred.
- 8.1.6. IW indicate that while the upgrade of Kilpedder does not include any provision for additional capacity, some additional capacity will be achieved. The extent of additional capacity can only be determined following commissioning and resultant performance monitoring. In the event of capacity connection offers will be made on a first come first served basis.
- 8.1.7. The applicant is concerned that planning permission be in place in order to avail of any opportunity to secure a connection offer. I note from the third party submissions that there are some other residents who would also like to make a connection to an upgraded plant.
- 8.1.8. Pending undertaking of performance monitoring by IW the Board cannot be satisfied that there is any capacity in the proposed upgraded system. As such the Board may wish to consider whether there is a basis for determining that the proposed development is premature pending the availability of wastewater infrastructure. I submit that a refusal of permission for that reason would be in accordance with the Development Management Guidelines statements on premature applications and would be a reasonable decision.
- 8.1.9. The planning authority decided to refuse permission based on the fact that IW did not indicate that an upgrade of Kilpedder was planned within the lifetime of a permission. The position of IW is that it may be appropriate that a grant of permission would be conditional on capacity at the treatment plant being confirmed before the development can be connected to the public sewer network. As set out below I am not convinced that this option is compatible with

completing an appropriate assessment under the Habitats Directive in the absence of a NIS.

8.1.10. Notwithstanding the recommendation of IW in relation to the attachment of a condition on this matter and the desirability of completion of the small housing estate there is insufficient information on file to support the likelihood of capacity being available and the Board has no influence over the matter. My conclusion is that the development would be premature pending a determination by IW in relation to the availability of capacity in the upgraded Kilpedder plant.

### **Appropriate Assessment Screening (Stage 1)**

8.1.11. The application is not accompanied by a Stage 1 Screening report or by a Natura Impact Statement (NIS). The matter of appropriate assessment under the Habitats Directive is not addressed in the technical reports on file or in the application submissions.

8.1.12. The proposed development site lies within 10 km of the following European sites:

- The Murrough Wetlands SAC (site code 002249)
- Glen of the Downs SAC (site code 000719)
- The Murrough SPA (site code 004186)
- Bray Head SAC (site code 000714)
- Carriggower Bog SAC (site code 000716)
- Wicklow Mountains SPA (site code 004040)
- Wicklow Mountains SAC (site code 002122)
- Ballyman Glen SAC (site code 000713)
- Knocksink Woods SAC (site code 000725)

8.1.13. I consider that there is no potential for direct effects on European Sites.

8.1.14. In terms of the potential for impacts I refer in particular to the likely significant effects on the Murrough Wetlands SAC and the Murrough SPA.

8.1.15. The Kilpedder Wastewater Treatment plan is stated to be 5.3km upstream of the Murrough Wetlands SAC and the Murrough SPA. It discharges to the Kilcoole Stream, which flows in a south-easterly direction draining into the SAC and immediately adjacent the SPA. Thus there are downstream hydrological links between the wastewater treatment plant and the Murrough SPA and the Murrough Wetlands SAC.

8.1.16. In terms of the **conservation objectives** these are set out below.

8.1.17. The Murrough Wetlands SAC

8.1.18. The Conservation Objectives are to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/ or Annex II species for which the SAC has been selected.

8.1.19. The Murrough SAC is a coastal wetland complex 15km in length and up to 1km inland. It is 1.96km downstream of the site of the proposed development. The site is of importance as it is the largest coastal wetland complex on the east coast and contains a wide range of coastal and freshwater habitats including six listed on Annex I as well as containing threatened plants and areas of rich invertebrate fauna. It is an important site for wintering and breeding birds and over lands with the designated SPA. The qualifying interests are:

- Annual vegetation of drift lines [1210]
- Perennial vegetation of stony banks [1220]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Calcareous fens with *Cladium mariscus* and species of the Caricion *davalliana* [7210]\*
- Alkaline fens [7230].

8.1.20. The Murrough SPA

8.1.21. The Conservation Objective is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:

- Red-throated Diver (*Gavia stellata*) [A001]
- Greylag Goose (*Anser anser*) [A043]
- Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]
- Wigeon (*Anas penelope*) [A050]
- Teal (*Anas crecca*) [A052]
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
- Herring Gull (*Larus argentatus*) [A184]
- Little Tern (*Sterna albifrons*) [A195].

8.1.22. The second objective is to maintain or restore the favourable conservation condition of the wetland habitat at The Murrough SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

8.1.23. This is a coastal wetland complex that stretches for 13km from a location east of Kilcoole village southwards and in places up to 1km in width. As described above the site is hydrologically connected to the site of the proposed development, which is a direct distance of 2.65km away.

8.1.24. In view of the condition of the current non-compliance with the terms of the discharge licence and pending the upgrade of the WWTP and demonstrated additional capacity, I consider that there is potential for impacts on the SAC / SPA habitats as a result of water quality and the increased loading of an existing deficient wastewater treatment system.

8.1.25. I consider that in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on The Murrough Wetlands SAC and The Murrough SPA.

8.1.26. I do not recommend that permission be refused for this reason which would constitute a new issue in this case and should be put to the parties for prior comment. However, the Board may wish to highlight the matter in the Direction in the event of deciding to refuse permission for the reason recommended.

## 9.0 Recommendation

9.1.1. I recommend that permission be refused for the reasons and considerations below.

### **REASONS AND CONSIDERATIONS**

The proposed development would be premature pending confirmation of availability of adequate capacity in the upgraded Kilpedder wastewater treatment plant. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**Mairead Kenny**

**Senior Planning Inspector**

**1<sup>st</sup> February 2017**