



An
Bord
Pleanála

Inspector's Report PL.27.247234

Development	Four Houses, accessed off Season Park, connection to services and associated landscaping and site works.
Location	Season Park, Newtownmountkennedy, Co. Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	16/719.
Applicant(s)	Elmbawn Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellants	Elmbawn Ltd.
Observer(s)	None.
Date of Site Inspection	23 rd November 2016.
Inspector	Dáire McDevitt.

1.0 Site Location and Description

1.1 The site is within Season Park Housing development located on the northern side of Newtownmountkennedy. Season Park was built in the 1970s and is characterised by two-storey semi-detached dwellings fronting onto cul-de-sac or loop road layouts. The application site of 0.18 hectares is part of an existing open space area within the Season Park estate. The north of the site fronts onto the main access road and the south onto the turning area of a cul-de-sac. The eastern boundary consists of trees and hedges backed by a stone wall bounding Season Park House, a Protected Structure (Wicklow Ref. No. 13-43). The western boundary is undefined, as this site is currently continuous with the triangular area of open space and the area of the now redundant septic tank that originally served the scheme. The site slopes North to South.

1.2 Maps, photos and aerial images of site are in the file pouch.

2.0 Proposed Development

- Permission is being sought for 4. no detached two storey houses (g.f.a 165 sq.m).
- Access proposed off Season Park housing development (2 houses off the main access road and 2 houses off the cul-de-sac).

3.0 Planning Authority Decision

3.1 Decision

Permission was refused on the grounds of the following two reasons:

1. *Having regard to the existing character, intensity and pattern of development in the vicinity, it is considered that the proposed development would represent an excessive density and thus overdevelopment of the subject site, would be out of character*

with the existing pattern of development and would set an undesirable precedent for similar forms of cramped development in this area, would be contrary to the development standards of the County Development Plan 2010, would materially contravene the Residential Zoning objectives as set out in the Newtownmountkennedy Local Area Plan 2008 and the proper planning and sustainable development of the area.

2. *Having regard to the substandard provision of private open space which does not meet minimum rear garden depths or area requirements, it is considered that the proposed development would provide a substandard level of amenity to future occupants, would be contrary to the objectives of the Newtownmountkennedy Local Area Plan 2008 and County Development Plan 2010 and to the proper planning and sustainable development of the area.*

3.2 Planning Authority Reports

Planner's Report (8th August 2016)

This forms the basis of the Planning Authority's decision and the main points referred to relate to residential amenity and residential density.

3.3 Other Technical Reports

- **Roads Section** (3rd August 2016): No objection.
- **Irish Water** (27th July 2016): No objection.

3.4 Third Party Observations

One submission received at planning application stage, the main concerns raised can be summarised as follows:

- Site is Open Space. The estate was taken in charge by the Council with the area identified as open space.
- Depreciation in the value of No. 49 Season Park.
- Area is maintained by the residents with no involvement from the developer.
- Proposal is not in keeping with the scale and character of existing houses in Season Park.
- Detrimental effect on the amenities of existing properties adjoining the site.
- Concerns with surface water run off due to the slope in site.
- Seeking clarification from the Council in relation to the ownership of this open space where the site is located.

4.0 Planning History

There is extensive Planning History associated with the application site:

Planning Authority Ref. 14/1117. Permission granted in March 2014 for 4 no. semi-detached houses and access off exiting Season Park road. (16 conditions).

Planning Authority Ref. 08/2101 (ABP. Ref. PL.27.233075). Permission granted in November 2009 for 4 no. semi-detached houses (12 conditions).

Planning Authority Ref. 08/950. Permission refused in July 2009 for 4 no. detached houses for the following reasons:

1. *The proposed development would seriously injure the amenities and depreciate the value of properties in the vicinity because:*
 - a) *The site of the proposed development is located within an existing housing estate and the access road serving the proposed development encroaching into open space which was clearly indicated as such on the parent file 74/727, the loss of open space would be detrimental to the residential amenity of the existing house units.*
 - b) *The subject site due to the geometry of the land, the narrow strip along the open space and the restricted nature of the site, the proposed development of large detached residential units would create a gated community within an existing housing development of semi-detached units and would constitute an incongruous, obtrusive form of over development, resulting in the subdivision of the estate which would be out of character with the general layout of properties in the vicinity and thereby detract from the general visual amenity of the area.*
2. *Having regard to the location of the proposed development in a Level (4) settlement, no evidence has been submitted to show that the applicant is willing to restrict development in accordance with the local need policies as set out in Chapter 3, Section 4 of the County Development Plan. Accordingly, the Planning Authority is not satisfied that the proposed development would materially contravene County Development Plan policy, the Regional Planning Guidelines and would be contrary to the proper planning and sustainable development of the area.*

Planning Authority Ref. 74/727. Permission granted (no date available) for housing development. This is the parent permission for Season Park Housing development. Retail Units were granted on the current application site under this permission.

5.0 Policy Context

5.1 Newtownmountkennedy Local Area Plan 2008-2018

Land Use Zoning Objective

RE: Existing Residential. *To protect, provide and improve residential amenities of adjoining properties and areas while allowing for infill residential*

development that reflects the established character of the area in which it is located.

5.2 Wicklow County Development Plan 2010-2016

Section 5.3.2 Moderate Growth Towns (Level 4)

Objective:

UD5 *The settlements in Levels 4 (moderate growth towns) shall be prioritised for moderate growth and investment and shall absorb demand for new housing from inside and outside the County subject to the following controls.*

- *In any new multi-house development, a minimum of 20% of new houses shall be sold to persons that have been living and/or working in County Wicklow for at least 1 year. There are no restrictions on the remaining 80%.*

Section 5.4 Urban design standards

5.4.5 Design quality

5.4.5.1 Layout

- Notwithstanding established separation 'rules' that may be applied to maximise privacy for dwellings (see below), traditional back-to-back rows of 2-storey houses, exactly 22m apart should be avoided and more imaginative layouts and building forms provided, subject always to adequate privacy being provided;
- Layouts shall ensure adequate sunlight and daylight, in accordance with "*Site layout planning for daylight and sunlight: a guide to best practice*", (BRE 1991);

Privacy

- *Residential developments shall be so designed and constructed to ensure maximum privacy for residents;*
- *A separation of 22m will normally be required above ground level between opposing windows serving private living areas (particularly bedrooms and living rooms). However, this rule shall be applied flexibly: the careful positioning and detailed design of opposing windows can prevent invasion of privacy even with short back-to-back distances.*

Windows serving halls and landings do not require the same degree of privacy as say balconies and living rooms;

- *The degree of 'overlooking' afforded by different windows types shall be considered appropriately; for example, an angled roof light will not have the same impact as a traditional 'flat' window on the same elevation;*

Section 5.4.5.3 Open Space

- *Dwellings (including own door duplexes) shall be provided with private open space at a rate of 0.64sq.m per 1sq.m house floor area (for the first 150sq.m), with the minimum garden size allowable being 48sq.m.*

5.4.6 Other issues

5.4.6.1 Infill / backland development in existing housing area.

Many older housing areas were built at densities and in such formats that resulted in particularly large plot sizes. Where opportunities arise for infill or backland type development, the following standards shall apply:

- The site / plot must be capable of being developed in accordance with the density limit set for that area in the local area or town plan, or in any case in keeping with the prevailing density of the immediate area.
- Where no density limit is set (for example, in areas zoned 'existing residential'), the quantum of development that will be permissible will flow as a result of adherence to best development standards.

5.3 Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities (2009) Chapter 6 Smaller Towns & Villages (Population of 400 to 5000).

Section 6.3 (e) The scale of new residential schemes for development should be in proportion to the pattern and grain of existing development.

Section 6.4 Planning authorities must take account of the wider development context in preparing plans for smaller towns and villages. (i) For those towns and villages within the 45 minute - 1 hour travel time range from major cities

and which are experiencing significant levels of new largely commuter-driven development. It is vitally important that planning authorities channel development through their small town and village plans in a way that is consistent with higher level plans such as the development plan of the county they are situated within, any regional planning guidelines that are in force and the National Spatial Strategy in order to build up the critical mass of the key cities and towns.

Section 6.11 Edge of Centre Sites

The emphasis will be on achieving successful transition from central areas to areas at the edge of the smaller town or village concerned. Development of such sites tend to be predominantly residential in character and given the transitional nature of such sites, densities to a range of 20-35 dwellings per hectare will be appropriate including a wide variety of housing types from detached dwellings to terraced and apartment style accommodation.

5.4 Natural Heritage Designations

There are no sites of relevance in the immediate vicinity of the application site.

6.0 The Appeal

6.1 Grounds of Appeal

A First Party Appeal has been lodged, the grounds of appeal can be summarised as follows:

Regarding Reason for Refusal No. 1:

- Principle of development already established by the granting of three previous permissions on the application site (14/1117, 08/2101 and 74/727).

- The proposal would protect existing amenity and provide visual diversity.
- Infill residential development is acceptable under the land use zoning.
- Season Park is made up of a mixture of house types already, therefore the proposal would not be out of character with the established pattern of development.
- If the application site is considered in isolation the proposed density is 29.3 units per hectare. However, if considered as part of the larger scheme of Season Park, then the density would be considerably less. The Sustainable Residential Development in Urban Areas Guidelines outline that densities of 20-35 units per hectare are considered acceptable.

Regarding Reason for Refusal No. 2:

- The County Development Plan requires 0.64 sq.m per house (up to 150sq.m). This results in a requirement for a garden of 96sq.m and not 105sq.m.
- The original scheme complies with the minimum garden requirements. An additional scheme with slightly larger gardens has also been submitted for the consideration of the Board.
- Separation distances of 22 metres are achieved on the ground floor (living rooms to living rooms).
- Obscure glass proposed in the rear window of bedroom no. 2 as these are closer than 22 metres.
- Request flexibility on the separation distances and proposals to overcome this issue.

6.2 Planning Authority Response

No further comments received,

6.3 Other Party Responses

None received.

6.4 Observations

None received.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal can be dealt with under the following headings:

- Principle of Development.
- Residential Density.
- Residential Amenity.
- Appropriate Assessment.

7.1 Principle of Development

7.1.1 The Third party submission at Planning Application stage referred to the application site as 'Open Space'. This issue was raised under 08/2101 (PL.27.233075) at which time the Inspector and the Board concluded that the subject site had become integrated with the rest of the grassed area overtime but was not a dedicated area of public open space.

The proposed scheme is on land zoned for Existing Residential use as identified by the 'RE' land use zoning attributed to the site where the objective is *'To protect, provide and improve residential amenities of adjoining properties and areas while allowing for infill development that reflects the established*

character of the area in which is located'. A residential scheme is permitted in principle on lands zoned 'RE' subject to site specific considerations and compliance with Development Plan Policies/Objectives and Government Guidelines.

7.2 Residential Density.

7.2.1 A density of 29 units per hectare is proposed, the existing development (Season Park) has a density of 20/22 units per hectare. The County Development Plan does not set out a permissible density for lands zoned under Land use objective 'RE'. However, the Planning Authority considered the proposed density to be excessive, representing an over development of the site, inconsistent with the pattern of development in the area and refused permission accordingly.

7.2.2. The Sustainable Residential Guidelines sets out that densities of 20 to 35 per hectare are considered acceptable for edge of centre sites. It is also notes that new developments should integrate with existing densities and in proportion with the pattern and grain of existing development. The existing residential density for Season Park is 21.5 units per hectare. It is my considered opinion that the current proposal cannot be viewed in isolation due to its location within the estate and should be considered an integral part of the larger scheme. Therefore, in the context of the overall density for Season Park the density it is considered acceptable.

7.2.3 I, therefore, disagree with the Planning Authority's first reason for refusal and recommend that it is not upheld.

7.3 Residential Amenity.

- 7.3.1 The second reason for refusal relates to non-compliance with the minimum garden areas and rear garden depths. I note that Section 5.4.5.3 sets out that dwellings shall be provided with private open space at a rate of 0.64 sq.m per 1 sq.m house floor area (for the first 150sq.m). The proposed units have a g.f.a of 165 sq.m, therefore a minimum private open space area of 96sq.m (based on the first 150sq.m) is required. Rear garden areas proposed are: 99sq.m, 99sq.m, 105sq.m and 103sq.m respectively. These comply with the minimum garden areas as set out in the current County Development Plan.
- 7.3.2 Section 5.4.5.1 sets out that a minimum standard of 22 metres separation distance between directly opposing first floor windows should usually be observed. This would result in a rear garden depth of 11 metres where back to back houses with first floor opposing windows are proposed. The layout submitted shows a separation distance of c.17 metres between first floor opposing windows which does not comply with the minimum separation distances as set out in the current County Development Plan.
- 7.3.3. The applicant has proposed to use 'obscure' glazing to address the issue of overlooking and non-compliance with separation distances. The use of opaque glazing can be an effective method of addressing potential for overlooking from non-habitable rooms in built up areas while also protecting the residential amenities of both neighbouring properties and the structure in question. However, I am not satisfied that the use of opaque glazing is appropriate in this instance as the windows in question serve bedrooms and would result in an internal area of substandard quality for future residents.
- 7.3.4 Having reviewed the plans submitted I am of the opinion that a more appropriate method of addressing the shortfall is through a minor redesign of the units as follows:

- Omit the use of opaque glazing to windows serving bedroom no. 2 in all units.
- Unit No. 2 & 4: Setting back the first floor element of the rear projection by 1.5 metres, this would increase the separation distance between first floor windows.
- Unit No. 1 & 3: Remove the window to the rear elevation serving bedroom 2 and provide a window to the side (western) elevation only., overlooking the adjoining open space.

I am of the opinion that the issue of overlooking and non-compliance with the minimum separation distance can be adequately addressed by minor changes to the proposed units, as set out above. Subject to these changes the development would not detract from the residential amenities of future occupiers of the proposed units and comply with Section 5 of the current Development Plan. This can be dealt with by condition if the Board is of a mind to grant permission.

7.3.4 I therefore disagree agree with the Planning Authority's second reason for refusal and recommend that it is not upheld.

7.4 Appropriate Assessment.

Having regard to the nature of the proposed development, the location of the site in a fully serviced built up area and distance from the nearest Natura 2000 site. No Appropriate Assessment issues arise and it is not considered that the development to be retained would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission should be granted subject to the conditions as set out hereunder.

9.0 Reasons and Considerations

Having regard to the provisions of the Wicklow County Development Plan 2010 - 2016, to the design, extent of the proposed development and to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area. It is, therefore, considered that the proposed development would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The developer shall submit for the written agreement of the Planning Authority amended drawings indicating the following:

- (a) Windows serving bedroom no. 2 shall not be obscured glazing.
- (b) A set back of 1.5 metres to the first floor protection (bedroom no. 2) of houses no. 2 & 4.
- (c) Omission of the window to the rear elevation serving bedroom no. 2 of Units no. 1 & 3 and its replacement with a single window to the side (western) elevation overlooking the adjoining open space.

Reason: In the interest of residential and visual amenity.

- 3. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

- 4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

- 5. All service cables associated with the proposed development (such as electrical, telecommunications and communal television cables) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. Any existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

6. All rear gardens shall be bounded by block walls, 1.8 metres in height, capped, and rendered, on both sides, to the written satisfaction of the planning authority.

Reason: In the interest of residential and visual amenity.

7. The development hereby permitted shall be carried out and completed at least to the construction standards set out in the “Recommendations for Site Development Works for Housing Areas” issued by the Department of the Environment and Local Government in November, 1998. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals for this shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

8. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the [residential] amenities of property in the vicinity.

9. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the

planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Dáire McDevitt
Planning Inspector

9th December 2016