



An
Bord
Pleanála

Inspector's Report PL27.247505

Development

Construction of 4 No. 2 storey houses. The proposed houses will present 2 storey facades to the east and single storey entrance facades to the west. Permission will allow for foul, surface and storm water connections to adjacent development 08/1704 (duration extended), new entrance from the Mount Alto Road, internal service road with guest parking, public amenity area, landscaping and associated site works and services.

Location

Mount Alto Road, Ashford, Co. Wicklow.

Planning Authority

Wicklow County Council.

Planning Authority Reg. Ref.

15/861

Applicant(s)

Copia Capital Partners Ltd.

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

First and Third

Appellant(s)

(1) Copia Capital Partners Ltd.

(2) Robert Kavanagh

(3) James and Lola Kavanagh

(4) Niall and Carol Waldron

Observer(s)

None

Date of Site Inspection

1st February 2017

Inspector

Emer Doyle

1 Site Location and Description

- 1.1 The appeal site, which has a stated area of 0.52 hectares, is located on lands zoned as 'Existing Residential' in Ashford, Co. Wicklow. The lands are accessed from Mount Alto Road. There is a public footpath on the opposite side of road from the site.
- 1.2 The appeal site is part of a field which is very overgrown at present. I refer the Board to Photograph 8 of the appeal response submitted on behalf of the applicant which describes the site as 'a tract of waste ground within Ashford.' Levels on the roadside boundary range from 135.3m at the northern corner to 131.72m at the southern corner. The site falls sharply from the public road with a stated level of 118m in the north eastern corner.
- 1.3 A housing and retail development accessed from the main street is partly constructed on the adjacent site to the east. Substantial works have been carried out on this site on the residential element of the application only but there was no work going on at the time of inspection and it would appear that work has stopped. One off dwellings are located to the north and south of the site.

2 Proposed Development

- 2.2 Permission is sought for 4 no. detached part two storey dwellings of differing designs and floor areas between 176m² and 192m² with a new vehicular entrance. The applicant proposes water supply, effluent disposal and surface water disposal by way of new connection to the services on the adjoining site permitted under PRR 08/1704.
- 2.3 Response to Further Information Request received on the 12/04/16 included redesign of house types and relocation of houses on site, lowering of finished floor level of houses, placing a berm of 900mm high in the private open space of houses and removal of public open space, redesign of the internal road, details of boundary treatment and engineer's report in relation to sightlines.
- 2.4 Response to Clarification of Further Information received on the 17/06/16 provided for alterations to the access road to allow for emergency vehicle access. Bin

collection is proposed from a dedicated collection point on the road edge. A swept path analysis is provided for Fire Engineers. Photomontages of the proposed development from Mount Usher Gardens are included in the response. Details of boundary fencing is also included in the response.

- 2.5 Further drawings entitled 'relocated entrance junction', 'sightlines', and 'proposed road junction' submitted on 6/10/16 and revised site notice submitted on 17/10/16.

3 Planning Authority Decision

3.2 Decision

Permission granted subject to 13 conditions. Of note are the following conditions...

Condition no. 4: Condition restricting the first sale of 50% of the proposed houses to persons who have been resident and/or employed in County Wicklow for at least one year.

Condition no.7: Condition required the entrance to be installed in accordance with the Clarification of Further Information Response dated the 6/10/16.

Condition no. 10 required the finished floor levels of the houses to be built in accordance with the details submitted on the 6/10/16.

3.3 Local Authority and External reports

3.2.1 Area Engineer (15/09/15): Vertical road alignment (hump in road) to north of proposed entrance to site impacts negatively on sightlines; existing road is also very narrow at site entrance. Applicant to submit proposals to improve sightline in northlands direction at site entrance.

3.2.2 Area Engineer Roads (23/09/15): Requires Further information in relation to sightlines.

3.2.3 Irish Water (6/10/15): Requires Further Information in relation to water connection for each house and expected water consumption of the development per day.

3.2.4 Planner: (9/10/15): Planner notes that there was outline permission on the site under PPR08/1960 and considers that having regard to the settlement and zoning objectives and planning history of the subject site, residential development is

acceptable in principal. Concerns were raised in relation to visual impact, traffic impact, potential for overlooking, quality of open space, boundary treatment and development plan policy in relation to Objective UD6 for Small Growth Towns.

- 3.2.5 Area Engineer (18/04/16): Clarification of Further Information required in relation to access.
- 3.2.6 Roads Section (26/04/16): Clarification of Further Information required in relation to internal road, access, connection to footpath, and access to House No. 1.
- 3.2.7 Planner (24/05/16): Clarification of Further Information required in relation to traffic safety, visual impact and boundary treatment.
- 3.2.8 Area Engineer (4/07/16): Swept path analysis submitted with response is not detailed enough.
- 3.2.9 Senior Engineer Planning (11/07/16): Considers that whilst the access is not ideal, it is acceptable for 4 houses. Considers that photographs taken of sightlines do not accurately reflect the location of the proposed entrance on the drawings and requires clarification of same.
- 3.2.10 Planner (11/7/16): Requires clarification on access as per the report of Senior Engineer Planning.
- 3.2.11 Planner (24/10/16): Sightlines of 90m can be achieved and this was discussed with the Senior Engineer Planning and considered that the location of the site entrance maximizes potential sightlines at this location.

3.3 Planning History

- 3.3.1 08/1961 Permission granted for access road with turning bay, footpaths, green area, drainage and all associated site works.
- 3.3.2 08/1960: Outline permission granted for 5 No. serviced sites, drainage and all associated site works.
- 3.3.3 06/5772: Outline permission refused for 5 dwellings.
- 3.3.4 08/1704: Warning letter issued in relation to 08/1704 (duration extended under 14/1188 - mixed use development comprising of retail and residential uses in

ownership of same developer on adjoining site to east). Construction has stopped on this site at present.

4 Policy Context

4.2 Development Plan

4.1.1 The relevant Development Plan is the Wicklow County Development Plan 2016 – 2022.

4.1.2 Ashford is designated as a small growth town in the Wicklow County Council Development Strategy. There is no restriction on the occupancy of houses within the settlement as it is a designated growth town.

4.1.3 Site is zoned as 'Existing Residential' in the Ashford Town Plan.

5 The Appeal

5.2 Grounds of Appeal

5.1.1 A first party appeal has been lodged on behalf of the applicant which can be summarised as follows:

- Appeal against Conditions 3 and 4 only.
- Condition 3 does not allow for security to be provided in the form of a bank or insurance company bond. Section 7.13 of Development Management Guidelines states that 'acceptable security' can take the form of 'bond, cash deposit or otherwise so as to secure...satisfactory completion' of a development.
- The second concern in relation to condition 3 is that it extends to cover the satisfactory compliance with conditions of this permission. Section 7.13 of the

Development Management Guidelines envisages that security should simply be sufficient to 'enable the planning authority to complete the necessary services.'

- The third concern relates to the amount required of €142,500 which is disproportionate to the size of the site, the size of the development, and the nature and extent of ancillary communal facilities to be provided in connection with the development. The shared facilities on the site itself would comprise of a minor no through road and a landscaped roadside strip of open space and we respectfully invite An Bord Pleanála to direct the Council to reduce the figure to c. €40,000.
- It is considered that the 50% restriction to persons resident or employed in Wicklow for at least a year does not have a statutory basis and is not required by the newly adopted Development Plan.

5.1.2 Three third party appeals have been lodged by Robert Kavanagh, James and Lola Kavanagh, and Niall and Carol Waldron. The grounds of appeal can be summarised as follows:

- Concerns regarding traffic safety and sightlines at the access.
- Concerns regarding overlooking.
- Permission granted by Council before the date for submissions had ended. Acknowledged as an error by Council and resulting in the necessity to appeal decision to An Bord Pleanála.
- Concern regarding impact of rock breaking during construction.
- Concern regarding past behaviour of developer and unfinished site below this site which is in the same ownership.

5.3 Responses

5.2.1 A response has been made by Wicklow Co. Co. in relation to the first party appeal only. There is no response from the Council in relation to the third party appeals. The response can be summarised as follows:

- An Bord Pleanála is referred to a previous appeal under PL Ref 27.241834 where the Board upheld the Council's condition seeking a cash contribution. The Planning Authority has found over the years that the use of cash security has proved to be very successful in ensuring developers complete housing developments to proper standards and in compliance with the permission. Wicklow Co. Co. is very proud of its record of the lowest number of 'ghost estates' in the country and the holding of cash security as opposed to insurance/ bank bonds has assisted in a major way.
- No justification is put forward by the appellant for the suggested 40K security. The Planning Authority's security is calculated on the basis of 1500/m length of estate road. The entrance road is the main piece of infrastructure serving the development.
- Condition 4 is in accordance with Objective UD6 of the CDP.

5.2.2 A response has been submitted on behalf of Copia Capital Partners Ltd. which can be summarised as follows:

- Lightly trafficked road where speed is lower than the permitted 80km/h due to the nature and alignment of the road.
- Photographs attached to the response illustrate the visibility from the eastern side of the road. These illustrate a different impact than those attached to the third party appeal which are taken from the western side of the road.
- Concerns raised in relation to visual impact are not shared and the land is zoned for development.
- Having regard to the redesigns submitted which provide for a blank gable wall, the claims in relation to overlooking are refuted.

5.3 Observations

5.3.1 None.

6 Assessment

6.1 Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

- Principle of the proposed development/Development Plan policy.
- Design scale, visual and residential amenity.
- Traffic Impact
- Appeal against conditions
- Other issues

6.2 Principle of the proposed development

6.2.1 The proposal is for four detached dwellings in the small town of Ashford, Co. Wicklow. According to Development Plan policy Ashford is a Level 5 Small Growth Town. The site is within the settlement boundary of Ashford as identified in the Ashford Town Plan and is zoned as 'Existing Residential'. I note from the file history that there was outline permission on the site for 5 No. services sites under PPR 08/1960. Having regard to the planning history, zoning objective, and settlement policy of the current Development Plan, I consider that residential development is acceptable in principle.

6.3 Design, scale, visual and residential amenity:

6.3.1 The proposal is for 4 no. detached, part two-storey dwellings. The proposal generally conforms to the existing pattern of development with existing dwellings located in the

vicinity of the site. The overall scale of the dwellings would not be out of character or scale relative to existing dwellings in the vicinity. I note that concerns have been raised in relation to overlooking of adjacent properties, however I note that revised designs were submitted dated the 12/04/16 which relocate houses on the site to increase the separation distance and provide for revised designs so that there is no possible overlooking. As such having regard to the redesign of the proposed dwellings, their relocation on the site and the level of separation relative to adjoining properties, I am of the view that the proposed development would have no detrimental impact on the adjoining properties.

6.3.2 In regards to overall visual impact as noted earlier the design and scale of the dwellings would not be out of character or scale with existing development on adjoining sites or in the vicinity. The site is located on elevated lands zoned as town centre and will be a prominent site when viewed from both the town centre and in more distant views from Mount Usher Gardens. The eastern elevations in particular are very important when viewed from these locations. I note that revised designs were submitted to the Planning Authority dated 12/04/16 which simplify the designs and reduce the visual impact by using a simpler palette of materials. I refer the Board to the contextual elevations submitted dated 12/04/16 which show both the original design and the revised simplified design. The revised drawings also indicated that it is proposed to provide a level area of private open space in line with the standards set out in the development plan with a berm of 900mm high behind the level area which will obscure part of the lower storey of the houses. I note that photomontages have been taken from both the car park of Mount Usher Gardens (17/06/16) and the main street in Ashford which show that whilst the dwellings will be visible from these locations, they can be integrated. As such, I am satisfied that the proposed dwellings can be assimilated successfully into the landscape at this location. I am satisfied that subject to satisfactory landscaping proposal that the overall visual impact of the development is acceptable at this location.

6.4 Traffic Impact:

6.4.1 The main concern raised by the objections relates to sightlines at the entrance. The main concern raised by the Planning Authority throughout the course of the

application related to both the sightlines at the entrance and the gradient of the access road.

- 6.4.2 Revised drawings and details in relation to the access have been submitted to the Planning Authority dated 12/04/16, 17/06/16, and 6/10/16.
- 6.4.3 The principle issue is that the proposed entrance is located in close proximity to a bend where there is also a hump in the road. The further information submitted dated the 12/04/16 and 17/06/16 indicate that sightlines of 120m in both directions are achievable. However, this is not actually achievable on the ground and I refer the Board to the report of the Senior Executive Engineer Planning dated the 11/07/16. It states that the submitted photographs do not reflect the situation on the ground and appear to be taken too close to the top of the vertical curve in the road. Revised drawings were submitted to the Planning Authority dated the 6/10/16 which indicate a revised site entrance. According to the information in the Planner's report this access is 10m from the vertical crest crown but removed from the hidden dip. Sightlines of 90m to a height of 1.05m can be achieved. It was considered by the Planning Authority that this location maximises potential sightlines available at this location and I concur with this view.
- 6.4.4 Concerns were also raised in relation to the gradient of the access road and swept path analysis was submitted in relation to emergency vehicles and long vehicles. The report from the Senior Engineer Planning notes that the access drive to the 4 dwellings is not ideal, but having regard to the topography of the site, its zoning and the planning history, it was considered that the proposed driveway was of sufficient standard to serve 4 No. dwellings. The frequency of large vehicles accessing the site would be infrequent and it was considered that a significant safety risk would not be posed. Arrangements were made for a roadside bin collection similar to the existing houses in the area so that bin lorries would not have to access the site.
- 6.4.5 Having regard to the level of additional traffic associated with the proposed development (4 dwellings), which is modest, the level of traffic using the road which I would consider to be a local road that is not heavily trafficked, I am satisfied that the optimum sightlines have been achieved in the drawings dated 6/10/16. Having

regard to the zoning of the site, the very difficult topography, the previous outline permission, and the small scale of the development, I am satisfied that the proposals for the access road are acceptable. As such, I would be satisfied that the proposed development provides an access road and access that would be of sufficient standard to provide for traffic likely to be generated without causing obstruction to other road users or a subsequent traffic hazard.

6.5 Appeal against conditions:

6.5.1 Condition 3: Condition 3 relates to the requirement of **cash security of €142,500** by the Council 'for provision and satisfactory completion of open spaces, roads, footpaths, storm water, sewers, public lighting.....'

6.5.2 The first party appeal opposes this requirement on three grounds relating firstly to the amount of €142,500 which could be reduced to €40,000 having regard to the size of the development and the shared infrastructure with the adjacent development, secondly to what items such security would cover and thirdly to the requirement for cash rather than another form of 'acceptable security' such as a bond or cash deposit.

6.5.3 The response from Wicklow County Council points out that the Council has previously put forward a case to the Board on the necessity for upholding its cash security deposit under PL27.241834 which was upheld by the Board. It is stated that Wicklow County Council has the lowest number of ghost estates in the country and the holding of cash security as opposed to another method of security has assisted in a major way in this regard. It is stated that the amount of security is necessary having regard to the type of infrastructure proposed. The topography of the site has resulted in the need to construct a non-standard estate road, which if not constructed properly would be very expensive to rectify. The cash flow of the developer should not be the determining factor in the amount of security but rather the cost of providing the infrastructure. The amount of €142,500 was calculated on the basis of €1500/m length of estate road.

6.5.4 I note that the developer has not put forward any calculation for a reduction of the amount of security to €40,000, whereas the Council have calculated the contribution based on the road length. The road is the most significant piece of infrastructure on this particular site having regard to the topography and it is clear that if it was constructed incorrectly, it would be expensive to correct. Whilst Section 7.13 does allow for 'acceptable security by way of a bond, cash deposit or otherwise', it would appear that Wicklow County Council have an excellent record in its ability to complete developments where developers have left occupied developments

unfinished and they consider that cash security has assisted in a major way in this regard. It is noted that the cash deposits area held by the Council in separate bank accounts and can only be used for the specific purpose of ensuring an estate is completed properly.

6.5.5 Condition 3 requires the payment of security to the Planning Authority to ensure compliance with the conditions of the permission. I consider that the form and amount of security outlined under this condition is appropriate and reasonable.

6.5.6 Condition 4: Condition 4 relates to the requirement that the first sale of 50% of the proposed houses shall be restricted to persons who have been resident and/or employed in County Wicklow for at least one year.

6.5.7 The response from Wicklow County Council notes that Condition 4 was in accordance with Objective UD6 of the County Development Plan 2010-2016. I note that a new Development Plan has been adopted for County Wicklow 2016-2022. Ashford is designed as a 'small growth town' in both the current and previous development plans. I note however, that there is no restriction on the occupancy of housing within the settlement in the current development plan and as such I consider that this condition can be omitted in line with the provisions of the current development plan.

6.7 Other Issues:

6.7.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, 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.

7 Recommendation

In view of the foregoing, it is recommended that the planning authority decision to grant permission be upheld.

8.0 REASONS AND CONSIDERATIONS

Having regard to the nature and scale of the proposed development, its location within the village boundaries, the pattern of existing and permitted development in the area, and to the existing residential zoning objective of the site as set out in the Ashford Town Plan, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further information submitted the 12th day of April, 2016 and by clarification of further information submitted the 17th day of June, 2016 and the 6th day of October 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject to written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2.
 - (a) The roofs of the proposed dwellings shall be finished blue-black or slate-grey in colour throughout (including ridge tiles) using slates or flat-profile tiles only, unless otherwise agreed in writing with the planning authority.
 - (b) The external walls shall be finished in smooth or wet-dash render only, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity and in the interest of clarity.

3. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to and agreed in writing with the planning authority prior to commencement of development. Any external lighting shall be cowled and directed away from the site boundaries. Low-level lighting shall be employed

along the new access roadway. Such lighting shall be provided prior to the commissioning of the development.

Reason: In the interest of amenity and public safety.

4. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development, unless otherwise agreed with the planning authority.

Reason: In the interest of visual and residential amenity.

5. Site development and building works shall be carried out only between the hours of 08.00 to 18.00 Monday to Fridays inclusive, between 08.00 to 14.00 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 amenities of property in the vicinity.

6. 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.

7.
 - (a) All foul sewage and soiled water shall be discharged to the public foul sewer.
 - (b) Only clean, uncontaminated storm water shall be discharged to the surface water drainage system.

Reason: In the interest of public health.

8. Proposals for an estate/street name, housing numbering scheme and associated signage shall be submitted to and agreed in writing with the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s)

Reason: In the interest of urban legibility and to ensure the use of locally appropriate place-names for new residential areas.

9. (a) The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of public safety and residential amenity.

10. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit to secure the provision and satisfactory completion of roads, footpaths, watermains, 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 of any part of the development. The 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 secure the satisfactory completion of the development.

11. 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. 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer, or in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Emer Doyle

**Planning Inspector
15th February 2017**