



An
Bord
Pleanála

Inspector's Report PL09.248519

Development	79 no. residential units, etc..
Location	Ballymore Eustace, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	17/204.
Applicant	Kieran McCarthy (Receiver).
Type of Application	Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First
Appellant	Kieran McCarthy.
Observer(s)	None.
Date of Site Inspection	14 th August 2017.
Inspector	Philip Davis.

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1.0 Introduction

This appeal is by the receiver of the former developer into the decision by the planning authority to refuse permission for a 79-unit residential development in Ballymore Eustace, Co. Kildare. The reasons for refusal relate to traffic issues and concerns around a water main running through the site. **I note that there is a pending judicial review regarding the dezoning of this site.**

2.0 Site Location and Description

- 2.1. Ballymore Eustace is a village with medieval origins in east Kildare on the north side of the Liffey close to the Poulaphuca Reservoir with a population in the last census of 872, a rise of 20% over the previous census. It lies in a rolling landscape intersected by the meandering course of the Liffey. The village has a small Main Street at a public square, where the road crossing the Liffey meets a number of other routes converging from various directions on the north-east side of the river. There is a small residential extension that sprawls along the road system leading to the bridge over the Liffey on the southern side of the river. The village is served from the Dublin City Water supply at Poulaphuca and has its own wastewater treatment system. It is served by the no.65 Dublin Bus route to Dublin.
- 2.2. The appeal site is a roughly L-shaped area of land located just south-west of the suburban extension of Ballymore Eustace south of the Liffey. It is a grazing field with a site area given as 5.115 hectares which rises in levels gradually to the west. GSI information indicates that the land is on deep till material overlying mudstone/greywacke bedrock. There is a line of semi-mature oak trees along the northern side of the site which bounds the R413 Brannockstown Road. The boundary to the north is a low stone wall with intermittent hedge. Opposite this road are low-lying poorly drained fields and woodland. The north-east and east side of the site bounds the rear of a small estate of 1 and 2 storey semi-detached dwellings (known as Liffey Heights) in addition to a line of bungalows facing the R411 (Hollywood Road) running due south. To the west and south-west of the site is a scarp slope of thick gravel deposits. Overlooking the site to the west is a relatively new graveyard at the top of the scarp slope.

3.0 Proposed Development

79 no semi-detached and detached dwellings (27 no.4 bedroom houses, 48 no. 3 bedroom houses and 4 no. 2-bedroom houses); 158 no. ancillary on-curtilage car parking spaces; a vehicular access into the scheme from the R413 positioned close to the north-western corner of the site and pedestrian linkages to the adjacent Liffey Heights residential development; hard and soft landscaping; playground; boundary treatments; solar panels; and all associated site development works above and below ground.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to refuse permission for 2 reasons, which I summarise as follows:

1. The access to the site would be a traffic hazard, in particular for pedestrians and cyclists due to a lack of footpath facilities on Liffey Bridge and inadequate footpath facilities on the R413. It is also considered premature prior to a new footway crossing being constructed over the Liffey Bridge and on the R413 and R411.
2. It is considered to be substandard with regard to the proximity of proposed dwellings to an existing 700mm trunk watermain which traverses the site.

4.2. Planning Authority Reports

4.2.1. Planning Reports

It is noted that there was a previous application for housing on the site which was granted by the County Council but refused by the Board (**PL09.122432**). The site was previously zoned residential but were dezoned in the 2017-2023 CDP and is deemed to be in agricultural use. The High Court deemed that the decision of Kildare County Council insofar as it relates to the zoning of the applicant's lands in the new Development Plan be stayed until the determination of the application for judicial review. Further points:

- It is noted that there are a number of recorded monuments in proximity.
- The layout is considered suburban in nature and does not necessarily reflect the characteristics of a site on the periphery of a village.
- It is considered to be in compliance with Part V.
- The Transportation section has recommended refusal.
- It is noted that Irish Water recommend refusal as they consider the layout to be not acceptable.

4.2.2. Other Technical Reports

The **AA screening report** notes proximity (2.2 km) from Poulaphuca Reservoir SPA. It is considered there is no pathway for loss or disturbance of habitats so there is no potential for significant effects. No NIS required.

Transportation Department recommended refusal due to conflict with pedestrians/cyclists and inadequate footpaths on the R413 and R411.

Water Services – recommends a number of conditions on surface water – refers to an **Irish Water** submission recommending refusal.

Environment Section – standard conditions recommended.

Environmental Health Officer – standard conditions recommended.

Fire Services – Standard conditions recommended.

Naas Municipal District Planning: Recommends a number of standard conditions.

Housing Section: Recommends condition on Part V.

4.3. Prescribed Bodies

Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs

Notes proximity to a number of recorded monuments. Recommends that a geophysical survey should be carried out on the site before a decision is taken.

An Taisce

Recommend that it should be examined under the test requirements of Box 5.2 of the National Spatial Strategy Ireland 2002.

Fisheries Ireland

Notes that it is in the catchment of the River Liffey, which supported Annex II and V species in the EU Habitats Directive. Recommends conditions to protect watercourses.

Irish Water

Recommends a refusal as the layout is not considered acceptable given the proximity to the existing 700mm trunk watermain.

4.4. Third Party Observations

J.A White of Golden Falls, Ballymore Eustace.

- Notes the lands are no longer zoned residential.
- Raises concerns on the access and traffic safety.
- It is denied there is a shortage of properties available in the area.
- It would interfere with local visual amenities.

5.0 Planning History

On two previous occasions the Board on appeal refused permission for residential developments on the lands (the applications were apparently for a larger area than the current site). In May 2001 a proposed development of 130 houses, granted by the planning authority, was refused (**PL09.122432**) for the following reason:

Having regard to:-

- a) the Special Village status of Ballymore Eustace in the current Kildare County Development Plan, where the special amenity character and quality of the village is to be retained,*
- b) the Strategic Planning Guidelines for the Dublin and Mid-East Regions,*
- c) the scale of the proposed development,*
- d) the absence of an adequate public transport infrastructure and to*
- e) the deficiencies in the road network serving the area,*

it is considered that the proposed large scale, low-density, suburban-type development would not integrate successfully with the existing village, would conflict with the provisions of the Development Plan and would seriously injure the amenities of the area. The proposed development would by reason of its nature and scale result in an unsustainable form of development and would, therefore, be contrary to the proper planning and development of the area.

A previous appeal **PL09.110160** in September 1999 was also refused, for the following reason:

Having regard to the special village status of Ballymore Eustace in the current Kildare County Development Plan, where the special amenity character and quality of the village is to be retained, to the strategic planning guidelines for the Dublin and mid-east regions, and to the scale of the development, to the absence of an adequate public transport infrastructure and to the deficiencies in the road network serving the area, it is considered that the proposed development would conflict with the provisions of the Development Plan and would seriously injure the amenities of the area. The proposed development would, therefore, be contrary to the proper planning and development of the area.

6.0 Policy Context

6.1. Development Plan

The site is at the edge of the village boundary in the village plan for Ballymore Eustace, Section 2.3.3 of the 2017-2022 Kildare County Development Plan. It was previously zoned residential. I note there is a judicial review pending. The site is now zoned agricultural open countryside. Extracts of the current Development Plan are attached in the appendix to this report.

6.2. Natural Heritage Designations

The closest EU designated habitat is the Poulaphouca Reservoir SPA, site code 004063, some 2.5 km to the east.

7.0 The Appeal

7.1. Grounds of Appeal

Reason 1

- It is noted that the R413 is subject to a 60kph speed limit. A TTA was submitted with the planning application. It is submitted that the additional traffic from the proposed development would be negligible in the context of existing traffic. It is also noted that there are a number of alternative pedestrian/cycling linkages such as via the Liffey Heights residential development.
- A number of diagrams and photographs are submitted to illustrate the submission with regards traffic and safety.
- An alternative to the proposed new pedestrian bridge is proposed – a stop/go system – the applicant states that it would be open to a special contribution to the implementation of safe, appropriately scaled pedestrian facilities along the length of the Ballymore River Crossing.

Reason 2

- It is argued that in the context of other Irish Water requirements (noted in regard to the proposed Shannon Water Scheme and others), that 8 metres is generally considered adequate, and in all cases the dwellings proposed are in excess of this. It is submitted that there would be no issues with access for maintenance of this water pipe. It is also noted that the original letter from Irish Water is not on the planning file and requests that the Board seek clarification from Irish Water.

7.2. Planning Authority Response

The planning authority submitted the responses of the Transportation and Water Services. Transportation notes the points raised and states that the cost of a stop-go system would be in the region of €250-300,000. The Water Services section notes the watermain carries 20 million litres per day and supplies 25% of County Kildare's water main – it is stated that it is still of the opinion that the proposed layout

would seriously compromise the future maintenance of the infrastructure and pose an undue risk of flooding.

8.0 Further Correspondence

The **applicant** responded to the planning authority response as follows:

- It is noted that the Transportation Department accepts that the issue can be resolved with infrastructure works.
- It is noted that the objectives are repeats of those in the previous plan period, but were not delivered.
- The applicant states that they are willing to accept a special development contribution in respect of the proportion of benefit that may be attributed to the subject lands.
- It is noted that Irish Water did not recommend refusal in its first submission.
- It is argued that the proposed development meets all published requirements for building around water mains.
- The submission includes a number of detailed enclosures.

Planning Authority

In response to the above, it is stated that KCC was unable to fulfil stated objectives due to lack of available funding. All development objectives will likely have to be funded by local developments.

9.0 Assessment

9.1. Principle of development

Ballymore Eustace is designated a 'village' in the 2017 Kildare County Development Plan, which in section 2.5.1 stated regarding such settlements:

Villages comprise populations of circa 1,000 people, serving smaller rural catchment areas and providing local services with, in some cases, smaller scale rural enterprises.

I interpret this in the context of national and regional policy as indicating that such settlements are intended to be population and service centres for a local catchment and are not intended for large scale developments, which would normally be directed to the major towns of Kildare. In this regard, while I note that the village seems to have had steady population growth in more recent years (but there were declines during the previous census period), there is no evidence of a shortage of zoned lands or housing for local people. The village plan has zoned two areas for 'new residential', both to the north-west of the village, north of the Liffey. Both these zoned sites are closer to the Main Street than the appeal site.

The appeal site is unzoned and is not within the development boundary of the village in the 2017 plan, although the Board will note that this appears to be stayed pending the High Court judicial review of the rezoning. It was zoned residential in the previous Development Plan. This may be interpreted as indicating that the lands are still zoned residential, but I note previous two Board decisions that development on these lands was contrary to the overall objectives of the development plans with regard to the scale relative to the village and inadequate infrastructure. While the site appears to be serviced, in other respects it is further away from the village centre than the two areas of zoned lands and there is no evidence that there is a shortage of zoned land to satisfy natural growth in the village. I would therefore conclude that in the context of national, regional, and local plan policy, there would be a strong presumption against the development of this land for residential use within the period of this development plan, notwithstanding the ambiguous zoning status of the lands.

There are a number of previous Board decisions relating to the overall lands (including the land west and south of the current site). In all cases the Board refused permission, generally for reasons relating to policy. While the policy situation has changed over the years, I would consider that the fundamental policy reason for refusing large scale residential on these lands still applies.

9.2. Pattern of development

Ballymore Eustace is a small village with medieval roots, which primarily serves as a local service settlement and is associated with the extensive ESB/Irish Water facilities at Poulaphuca, Golden Falls and Bishopslands. These include two dams, a hydroelectric scheme, and the largest drinking water processing facility in the State.

The village has a very narrow range of services, with just a handful of local shops and pubs/restaurants and a national school. There is no major foodstore in the village. The nearest major shopping/commercial towns would be Naas or Blessington. It has one regular Dublin Bus service to Dublin (no.65) via Blessington. The appeal site is on a peripheral extension of the village south of the river in an area where incremental development has extended close to 1-km south of the bridge over the Liffey on the Hollywood Road (R411). In addition, there is a small housing development between the Brannockstown and Hollywood Roads, dating from around the 1960's. Most of the bungalows along the road would date from the mid to later 20th Century, although few are recent. At the junction between the two roads there is a fine early 19th Century building which was at one time the village national school and is now a kitchen fittings showroom. There are other semi commercial/farm buildings at the apex of the two roads. The Brannockstown Road is less developed, with just a handful of dwellings along its route. It runs through a shallow cutting as it ascends to the scarp slope that overlooks the appeal site and the Liffey Valley. There is a large, relatively modern Council cemetery at the top of the slope.

The location, on rising ground away from the Liffey, and directly behind the single small housing estate on this side of the river from the village, makes it a logical southern extension site for the village if it is to extend further in this direction. But as I have noted above, the residential zoned lands north-west of the village would be far preferable in terms of accessibility and represent a more logical urban extension of the village than the appeal site and one more in line with national and regional policy guidelines (in particular, section 6.3 of the Sustainable Residential Development in Urban Areas Guidelines, 2009).

9.3. Design and layout

The proposed housing estate is designed on a conventional layout at a very low density – some 16 units per hectare. The mix of semi-detached and detached dwellings are sited on a series of cul-de sacs with five main areas of open space. There is one proposed road access to the Brannockstown Road, a pedestrian path joining up with the end cul-de-sac in the adjoining estate (this exits onto the Hollybrook Road), with a cul-de-sac on the south-western corner which could presumably be used for connections to any further developments on the open land

in this direction. The design is very suburban in nature and appears to have little or no regard to the Design Manual for Urban Roads and Streets. The density is well below the normal recommended for urban areas in national guidance.

I could consider that the overall design, due to its failure to connect with the overall town layout, the lack of LAP guidance (as required by the 2009 Guidelines with regard to small towns and villages – Chapter 6), and the overall suburban style layout, is inappropriate for an historic village such as Ballymore Eustace. While I would recommend a refusal for this reason, I note that this would be a new issue, which has not previously been raised with the appellant.

9.4. Traffic safety

The planning authority refused for reason of traffic safety, specifically the issue of pedestrian/cycling access to the village from the site.

The village of Ballymore Eustace has, within its boundaries, an effective network of footpaths. However, the Ballymore Bridge over the Liffey has just a very narrow, almost symbolic path on the east side only. This bridge is arched, but not so much that it acts as a traffic calming barrier. It is therefore a very obvious hazard for pedestrians, especially at night. A small residual path continues on the east side past the bridge on the R413. On the west side of the road before the junction between the Brannockstown and Hollywood Roads there is a more substantial footpath on the west side, commencing about 40 metres from the bridge.

There is no footpath on the Brannockstown Road as it runs to the west. It is a relatively narrow (for a regional road) and twisting road, with a number of partially blind corners. While it is walkable, it is undoubtedly hazardous for pedestrians.

A substandard, but reasonably wide footpath runs on the west side of Hollywood Road, up to and beyond the junction with the small estate. The footpath would probably be quite difficult in sections for wheelchair users and those with pushchairs, but would provide a reasonably safe refuge for pedestrians. There are speed control humps at the junction with the small estate and between this junction and the bridge.

The proposed development has two access/egresses. The main road access is a junction on the Brannockstown Road, where the road lacks a footpath. There is a

secondary access for pedestrians/cyclists via the existing cul de sac road to the adjoining housing estate (Liffey Heights) onto the Hollywood Road.

From the proposed road entrance, it would be just under 1 km to the village square of Ballymore Eustace. This would result in a trip of perhaps 300 metres along a twisty country road lacking footpaths. The route for pedestrians through the adjoining estate would be much safer, it would be on footpath for most of the similarly 1-km route. The exception is the crucial 100 metre section between the last section of good footpath on the south side of the river, and the north side of the bridge. This section is wholly unsuitable for any significant amount of foot/cycle traffic, especially at night or in bad weather conditions. I therefore concur with the planning authority that it is entirely inappropriate to permit any significant number of additional dwellings on the south side of the river until a safe passage has been created for pedestrians and cyclists.

The Development Plan (T2 and T3) states that it is an objective to realign and improvement the junction of the R413 and R411, in addition to '*widen and improve Ballymore Bridge and specifically to improve pedestrian facilities in this area*'. It is implied in the planning report that this would most likely take the form of a new bridge, rather than a widening of the stone arch structure. It seems that there is no budget allocation for these works, it would only be paid through development contributions.

The Transportation Section has stated that an acceptable solution could be traffic light controls, and the applicant has stated that they would accept a proportional special development contribution towards this – although since they are the only developer on this side of the bridge and there are no zoned lands, it's hard to see who else would contribute.

I would consider the suggestion by the Transportation Section to be suboptimal and a somewhat slapdash approach to a problem that can only be addressed through a comprehensive upgrade of pedestrian/cycling provision in the crucial 100 metre section including the bridge and the road to the junction of the two regional roads. It is clear to me that this section requires a comprehensive approach along the lines set out in the development plan, and until such time as this has been implemented, it is inappropriate to permit further residential development south of the Liffey. I therefore recommend that the first reason for refusal be upheld.

9.5. Infrastructure

The planning authority decided to refuse on the basis of what was understood to be a request from Irish Water. A 700mm watermain runs from the Irish Water facilities on the opposite side of the Liffey through the site, serving the larger urban areas of Kildare. There is very significant ambiguity from the file information as to the precise requirements Irish Water have for a watermain of this size and if it does represent a flood risk in the event of a failure. I note that the main goes through the adjoining estate and some dwellings are closer than 8 metres. The Board may wish to clarify this directly with Irish Water. While there is an obvious concern over any major development so close to a key water main, I would consider that if the Board is minded to grant, this is an issue that could be dealt with by way of a condition. I therefore would not recommend repeating this reason for refusal as there are other substantive grounds to refuse permission for this proposed development.

9.6. Archaeology and heritage

There are no recorded ancient monuments within the site, but there are two enclosure sites just south-west of the site, at the base of the scarp slope. There is no available information regarding these features. There is also a bullaun stone to the north-east, across the Brannockstown Road. There are no indications that the site itself has high archaeological potential - it would appear to have been quite intensively farmed, and this may have destroyed subsurface archaeology if it existed. Notwithstanding this, having regard to the proximity of recorded ancient monuments, I would recommend an archaeological monitoring condition if the Board is minded to grant permission.

There is one building listed on the NIAH just across the road from the proposed access. This is a ruined gate lodge for the Mountcashel Estate dating from around 1850, and rated as of regional interest. The former National School building at the main road junction is also rated of regional importance. I do not consider that the settings of either structure are likely to be negatively affected by the proposed development.

9.7. Appropriate Assessment and EIS

The closest Natura 2000 site is the Poulaphuca Reservoir SPA site code 004063, which is about 2.5 km to the east. The site is downriver from the reservoir. This

SPA is designed for the presence of the Greylag Goose and the Lesser Black Backed Gull. I note that the Liffey eventually discharges to Dublin Bay, which has three Natura 2000 sites. I also note that the Liffey contains Annex II and Annex V species (Habitats Directive). The appeal site is, at its closest, approximately 120 metres from the Liffey – there are dwellings and agricultural fields between it and the river.

The planning authority carried out a screening which concluded that an NIS was not required. Having regard to the separation distance from the site and the nearest SAC, and the absence of any pathways for pollution (assuming normal mitigation and control measures are carried out during construction works), and that foul water from the proposed development would go through the village wastewater treatment system, I consider that it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 004063, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

The development is of a size and scale below that set out in Annex II of the Directive on EIS (i.e. it is sub-threshold) and I do not consider that there are any specific environmental sensitivities that would justify an EIS.

9.8. Other issues

Notwithstanding the issue of flooding from a water main breach, the site is not within any area identified as having flooded in the past. The site is served by the village water and foul sewerage system, so if the Board was minded to grant permission, I would consider that a standard S.48 contribution would be required. I do not consider that there are any other substantive issues in this appeal.

10.0 Recommendation

I conclude that the proposed development, which is indicated to be on agriculturally zoned lands outside the village boundary in the 2017 Kildare County Development Plan, would be contrary to both national guidance and the provisions of the County

Development Plan, and would represent an inappropriate form of development for this village. As this issue was not raised directly in the appeal I do not recommend it as a reason for refusal, although I would note that the general reasons for refusal in the previous two Board decisions on this site would still apply.

I would recommend that the Board uphold reason 1 for refusal as I conclude that the linkage to the village is substandard and hazardous. I therefore recommend that the Board refuses permission for the proposed development for the reasons and considerations set out below.

11.0 Reasons and Considerations

The proposed development is located south of the Ballymore Bridge and outside the core area of the village and is generally in an area of substandard infrastructure. It is considered that the provision for pedestrians and cyclists from the junction of the R411 Hollywood Road and R413 Brannockstown Road across the Ballymore Bridge to the village is substandard and represents a traffic hazard for road users. It is considered that the proposed development would increase pedestrian and cycling use along this stretch of road leading to the village centre, and as such would be premature pending to the provision of improved safe pedestrian and cycling facilities over the Liffey, connecting to the footpath and road system of the village. The proposed development would, therefore, endanger public safety by reason of a traffic hazard and would otherwise not be in accordance with the proper planning and sustainable development of the area.

Philip Davis
Planning Inspector

16th August 2017