



An
Bord
Pleanála

Inspector's Report ADDENDUM PL93.248811

Development	117 residential units and associated site works.
Location	Knockboy, Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	16/701
Applicant(s)	J & B Neville Construction
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	James O'Sullivan
Observer(s)	None on file.
Date of Site Inspection	25 th September 2017
Inspector	Sarah Moran

NOTE: This addendum should be read in conjunction with my original report on file dated 4th October 2017, also the Inspector's report of PL93.248547 relating to an adjacent site.

1.0 Section 137 Notice

- 1.1. The grounds of the third party appeal in the subject case, as summarised in my report on file dated 4th October 2017, largely refer to matters relating to surface water drainage and related ecological issues and impacts on the appellant's lands. Section 137(1) of the Planning and Development Act 2000 (as amended) provides that the Board in determining an appeal may take into account matters other than those raised by the parties if the matters are matters to which, by virtue of this Act, the Board may have regard. Section 137(2) provides that the Board shall give notice in writing to each of the parties and to each of the persons who have made submissions or observations in relation to the appeal or referral of the matters that it proposes to take into account under subsection (1).
- 1.2. The Board issued a notice under section 137 on 26th October 2017, stating concerns in relation to the following matters:

“ Having regard to the low density, the lack of permeability for pedestrians and cyclists and to the poor quality of the residential layout and design in all phases of the proposed development which may be in conflict with the Design Manual for Urban Roads and Streets and the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas issued by the Department of the Environment, Heritage and Local Government in May, 2009, it is considered that the proposed development might seriously injure the residential amenities of the area and the residential amenities of future occupants and might, therefore, not be in accordance with the proper planning and sustainable development of the area.

Furthermore, the Board has concerns with regard to the provision of any roads or development at the location of the two duplex Type E Blocks in Phase 5 in the buffer area to the wetland which it considers should be omitted and also to the proliferation of individual entrances from the southern site boundary which are in conflict with the Design Manual for Urban Roads and Streets (2013).”

2.0 Applicant Response to Section 137 Notice

- 2.1. The applicant's response to the section 137 notice makes the following main points:

- Permission was granted for the original development in 2006, on which basis a significant number of houses have been constructed and sold. The owners of properties in that development purchased an equity interest in the public areas and services not taken in charge by the local authority. It is very necessary to respect the equitable interests of the existing owners / occupiers in the partially completed estate.
- The development site is considered to be 'outer suburban greenfield' in a city or larger town, as described in the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas. The recommended net density for such sites is 35-50 units / ha. Net density, as defined in the guidelines, excludes major and local distributor roads; primary schools, churches, local shopping, etc.; open spaces serving a wider area; significant landscape buffer strips. The wetlands area should be omitted from the development area, resulting in a net site area for density calculations of 3.13 ha and a resultant net density of 37.4 units / ha, which is within the 35-50 bracket.
- It is possible to shorten the access road to Phase 5 to ensure that it will not transgress into the buffer zone to the wetlands.
- The proposed roads and adjacent spaces can be amended to comply with the requirements of DMURS and to create homezones for child / pedestrian priority, thereby improving permeability for pedestrians and cyclists and improved road safety. The road from Phase 5 can connect to the road accessing Phases 1-4 to improve permeability.

2.2. The applicant submits 3 revised proposals in order to address the issues raised by the Board, Options A, B and C. These are considered in detail below. The Board is requested to attach appropriate conditions in respect of the preferred option.

3.0 Appellant Response to Section 137 Notice

3.1. The appellant's response makes the following main points:

- Emphasises the need to ensure that the wetland area and its surrounding buffer zone are not destroyed as a consequence of re-routing the natural and long established man-made surface and subsurface water networks.
- The wetland acts as a buffer to the peak storm water flows discharging via water and wastewater pipe networks and channels onto the appellant's lands. These increased flows, together with the previous intensive residential developments in the vicinity of the development site, have impacted very negatively on the appellant's livelihood.

4.0 Section 131 Notice and Applicant Response

4.1. ABP circulated the section 137 responses. The applicant's response to the appellant's submission makes the following main points:

- The applicant is aware of the need to protect the wetland area and surrounding buffer at the site.
- If permission is granted, the Board should include a standard condition requiring that drainage arrangements be agreed with the relevant statutory authorities and / or Irish Water prior to the commencement of development.
- The Board granted permission for the original development in 2006, which established a layout and drainage pattern for the residential development in the area. The applicant is committed to ensuring that no development takes place within the wetland area and buffer zone to the detriment of the drainage capacity of the existing networks as a result of the proposed development.
- It is possible to shorten the route of the road serving Phase 5 such that it does not encroach on the buffer zone to the wetland area.

5.0 Recent Decision on Adjacent Lands PL93.248547

5.1. The Board issued a decision on an adjacent site to the east, ref. PL93.248547, on 11th December 2017, since my previous report on file. In that case, permission was sought by Jackie Greene Construction Ltd. to construct 285 no. dwellings / maisonettes, vehicular and pedestrian access and site works on an 8.9 ha site. Waterford City & County Council (WCCC) granted permission. This was appealed by a third party, James O'Sullivan, the above named appellant for the subject case, on similar grounds. ABP held an Oral Hearing on PL93.248547 at the Tower Hotel, Waterford on 9th October 2017. The Board refused permission for 4 no. reasons:

1. The site is located at the eastern edge of the suburbs of the city of Waterford, and on lands zoned, in the Waterford City Development Plan 2013 – 2019, predominantly as “Undeveloped Residential”, and designated in this Plan as Phase 2 residential land. On the basis of the documentation submitted with the application and appeal, including the documentation submitted during the oral hearing, the Board is not satisfied that the development of these Phase 2 lands is appropriate in the absence of satisfactory evidence that all or a majority of Phase 1 residential lands within the city are not available for development. Furthermore, it is considered that the “core strategy statement” submitted with the application does not demonstrate, to the satisfaction of the Board, that development of the subject site is necessary to ensure continuity of housing supply in the city. The proposed development would, accordingly, be contrary to the provisions of the “Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas” issued by the Department of the Environment, Heritage and Local Government in 2009, which sets out the importance of the sequential approach to development and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the scale, density and nature of the proposed development, including the predominance of large three and four bedroomed detached and semi-detached houses, and the provisions of the “Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas” issued by the Department of the Environment, Heritage and Local Government in 2009 in relation to housing density in outer suburban/greenfield sites in cities and larger

towns, it is considered that the proposed development would result in an inadequate housing density that would give rise to an inefficient use of zoned residential land, would contravene Government policy to promote sustainable patterns of settlement, and would, therefore, be contrary to the provisions of these Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. On the basis of the information provided with the application and appeal, and in particular having regard to the uncertainties regarding the adequacy of the sewerage and surface water drainage proposals for the development, and the in-combination effects of sewage overflows from this and other residential developments in the area, and 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 Lower River Suir Special Area of Conservation (Site Code 002137) in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.
4. The proposed residential development, by reason of inadequate private open space provision for a number of the proposed houses, and in particular the houses in Blocks F/G and F1/G1, in combination with relatively poor orientations and aspects, would give rise to a substandard form of residential development, which would seriously injure the residential amenities of future occupants, and would constitute an inadequate form of residential amenity, in both quantitative and qualitative terms. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.2. See enclosed copies of the Board Order and Direction of PL93.248547.

6.0 **Additional Assessment**

6.1. Two principal issues arise for further consideration since my previous report on file. i.e.:

- The revised proposals submitted by the applicant in response to the section 137 notice, in particular with regard to density, layout and compliance with DMURS;

- Drainage and ecological impacts, on the basis of additional matters that subsequently arose in the course of PL93.248547, including the Oral Hearing.

These may be considered separately as follows.

6.2. Revised Proposals

6.2.1. The originally proposed development is a total of 117 no. residential units at the site as follows (as per the submission to the PA on 28th October 2016):

- Phase 3 on the western side of the site, accessed from the permitted spine road serving Phase 2. 36 no. semi-detached and terraced houses with a central open space and 1 no. detached house at the location of a crèche permitted under PL31.216423, fronting onto The Village, i.e. a total of 37 no. units.
- Phase 4 at the north western corner of the site, accessed from the permitted spine road serving Phase 2. 38 no. semi-detached and terraced houses with a central open space.
- Phase 5 at the eastern side of the site, adjoining the wetland area. Separate access road from The Village to the eastern side of Phase 5. Total of 42 no. units comprising 24 no. apartments in 3 no. blocks and 18 no. terraced, semi-detached and detached houses.

Having regard to the permitted Phases 1 and 2 at the site, my previous report on file estimates that the development would result in an overall net density of c. 35 units / ha.

6.2.2. The applicant's response to the section 137 notice proposes 3 revised options as follows:

Option A

A total of 132 no. units for Phases 3, 4 and 5, i.e. 15 no. additional units. The increase is achieved by replacing 12 no. semi-detached units in Phases 3 and 4 with 6 no. 'Type G/H' 3 story duplex blocks, i.e. 24 no. 2 / 3 bed apartments. The layouts are revised such that on street parking is provided rather than within the curtilages of individual houses. Also a revised layout to Phase 5 comprising 9 no. houses, 2 no. 'Type E' apartment blocks, one no. 'Type F' apartment block and 4 no. 'Type G/H' 3 storey duplex blocks, i.e. an overall increase of 3 no. units with development set

back from the wetland buffer zone. Revised roads layout for Phase 5 such that it is directly accessed from a roundabout on the existing Phase 1 road. The applicant estimates the net density of this layout as 42 units / ha.

Option B

A total of 120 no. units for Phases 3, 4 and 5, i.e. 3 no. additional units. Phase 3 is revised such that 36 no. houses are replaced by 28 no. houses and 16 no. apartments in 4 no. 'Type G/H' 3 storey duplex blocks, also revised parking layout. Phase 4 has a total of 32 no. houses and revised parking and open space layout. Phase 5 has the same layout as Option A. This results in a stated net density of 38.3 units / ha. It is submitted that this proposal would accommodate increased density without depreciating the amenities of current stakeholders in the partially completed estate.

Option C

A total of 134 no. units for Phases 3, 4 and 5, i.e. 17 no. additional units. Phases 3 and 4 are amalgamated with a revised open space configuration, 67 no. houses and 20 no. 2/3 bed apartments in 5 no. 'Type G/H' 3 storey duplex blocks. Shared parking is provided and there is a central public open space. Phase 5 has the same layout as Option A. The stated net density is 43 units / ha. The applicant submits that this option could have implications for existing stakeholders and that ABP may require revised notices if it is to be considered.

- 6.2.3. The revised layouts all significantly improve the setback from the wetland at the eastern side of the site and achieve a satisfactory buffer to this sensitive area. They also increase the overall residential density and improve the housing mix with a greater proportion of apartment units. These measures address several issues raised in my report of 4th October 2017. The revised Phase 5 layout, which is the same in all options, has a satisfactory density and improved integration with the remainder of the scheme, connecting with the spine road rather than The Village. The roundabout layout could be revised by condition for improved compliance with DMURS. The revised layouts for Phases 3 and 4 are similar and achieve varying levels of increased density, which is desirable. However, the proposals lack detail regarding the landscaping, materials and finishes of the shared spaces, which appear to be car dominated, and do not provide any contiguous elevations for the

revised layouts. The quantum of space in the public realm remains compromised in favour of large private rear gardens for individual houses. While the layouts provide some integration with Cnoic Caisleán to the west, there is no connection to Ashbrook to the north. Connectivity to the north is particularly important given the possibility of a more direct connection to the arterial route at the Dunmore Road. The crèche is replaced by a residential unit in all options, however this could be omitted by condition. In addition, the proposed options do not include details of car parking provision. It appears that the overall car parking provision for all options would be deficient with regard to the standards set out in Table 5.0 of development plan variation no.1, i.e. 2 spaces per house and 1.5 spaces per apartment with 1 visitor space for every 4 apartments. While there may be some flexibility with regard to car parking provision, I note that the development site is located in an area with limited public transport services. None of the proposed layouts include any cycle parking provision for the apartments.

- 6.2.4. To conclude, while the revised layouts achieve higher densities and an improved mix of residential units, they remain problematic with regard to integration with surrounding estates, car and cycle parking provision and quality of the public realm. I therefore consider that they do not fully address the refusal reason set out in my previous report.

6.3. **Drainage and Ecological Impacts**

6.3.1. Subject Development

To recap, the applicant proposes to discharge foul drainage to the public sewer and surface water to the stream at the eastern side of the site, via an attenuation system. This is a similar arrangement to that originally permitted at the development site under reg. ref. 05/60, PL31.216423. As per the ecological report submitted with the application (dated October 2016), the stream and drainage ditches at the site drain to the Lower River Suir SAC (site code 002137) c. 820m downstream, i.e. a direct hydrological connection. Potential effects on the designated site, with regard to its conservation objectives, relate to impacts on water quality and aquatic species. The ecological report sets out species and habitats potentially affected and concludes that standard mitigation measures during construction and operation will ensure that any adverse effects are avoided. No direct or indirect residual effects or cumulative

effects on the SAC are expected. The Baseline Wetland Assessment and Habitat Management Plan (April 2017) submitted as further information is also noted. The third party appeal relates to flooding of the appellant's lands downstream as a result of ingress of surface water into the foul network beyond the capacity of same, causing wastewater overflow from the Island View pumphouse to the appellant's crops.

6.3.2. PL93.248547 Proposed Drainage Arrangements and Matters Arising

With regard to the adjacent site to the east, the proposed surface water drainage arrangement was to discharge attenuated runoff via a pipe to the stream in the eastern part of the subject site with the flow less than existing greenfield runoff rate (3 l/s). A revised proposal, submitted to as further information WCCC, involved discharge to a separate pipeline. The development was also to connect to the existing public foul sewer that also serves the subject site. These arrangements were satisfactory to the Water Services Dept. of WCCC and to Irish Water and permission was granted on this basis under reg. ref. 16/833. The following information about the drainage infrastructure in the area and potential ecological impacts emerged in the course of that appeal, including the Oral Hearing:

- The stream at the subject site discharges to the appellant's lands to the north, on the banks of the River Suir. Those lands are defended from tidal flooding by a series of embankments and a flap valve at the point at which the stream leaves the appellant's lands. These tidal flood protection measures also prevent surface waters from discharging via the stream when the tide is in or during a tidal surge or storm event. Current fluvial flooding at the appellant's lands has worsened in the past 10-15 years.
- The foul drainage network in the area connects to the Island View pumping station, which is located adjacent to the western boundary of the appellant's lands. According to WCCC, the station caters for the discharge of combined effluent with a storm overflow system that discharges wastewater via a 1,200 mm outfall to the River Suir. The outfall pipe has 3 manhole chambers between the pump station and the discharge point to the River Suir.

- IE Consulting Engineer on behalf of the appellant states that the concrete capping on the manhole closest to the discharge point lifted in 2014, resulting in raw foul effluent discharging into his lands. The second manhole lifted in May 2016 and there was another discharge of foul effluent onto the appellant's lands. This overflowed to the estuary. These events are attributed to inadequate hydraulic capacity at the Island View station, resulting in overflow at periods of prolonged or heavy rainfall during high tide when discharge via the overflow is unable to occur, pressurising the overflow pipe and manholes. It is submitted that additional volume of surface water runoff generated from the development PL93.248547, even if released at a very low rate, could be retained within the stream and cause flooding until tide levels recede. The appellant also raises concerns regarding the ongoing functioning / maintenance of the attenuation system proposed for that development. With regard to foul drainage, the submission concludes that any additional foul water flows to this system would exacerbate the potential for uncontrolled foul discharge onto the appellant's lands.
- Tom Walshe, engineer on behalf of the applicant, submits that surface water flow from PL93.248547 is restricted to less than the pre-development runoff rate and therefore would not make any significant contribution to flooding at the appellant's lands. With regard to foul drainage, there are no capacity problems until the Island View pumping station. The development PL93.248547 would have proportionally a very small impact on the operation of the station (<5%) and the planning authority are in the process of enhancing the capacity of the outfall to the extent that would reduce the proportional contribution of PL93.248547 to <1%. Thus PL93.248547 would not make a significant contribution to problems downstream of the pumping station. It is also submitted that the overall foul sewerage network of Waterford City does not conform with modern good practice, as it retains a significant quantum of combined sewers. However, existing network deficiencies do not justify deferring / freezing all development in the catchment.

- WCCC Water Services Dept. comment, dated 29th September 2017, lists existing developments served by the foul drainage network in the area and states that the public sewer has capacity to cater for the existing and proposed development. However, there are some capacity deficiencies arising from infiltration into the sewer. There is uncertainty over the condition, route and performance of the surface water drainage network upstream of the Dunmore Road. The manhole covers were found to be defective at times of high tide and surcharge discharged. Works were carried out in 2017 to rectify all defects to these manhole covers. Irish Water and WCCC are confident that all measures have been put in place to stop any recurrence of the problem.
- I note the oral hearing submission of Pat McCarthy, Senior Engineer WCCC, as summarised in the Inspector's report of PL93.248547. Works carried out by Irish Water to address capacity deficiencies arising from infiltration to the public sewer have been completed. These include a re-routing of surface water from the combined network, therefore in theory increasing capacity. Mr McCarthy also submitted that all pumping stations have a designed overflow, as in this situation where the catchment has a combined system, in order to manage heavy rainfall as the network cannot be designed to cater for peak storm flows. However, it remains unclear whether the overflow from the Island View pumping station is (i) an emergency overflow that is only used in certain circumstances such as a storm event or (ii) a combined overflow that is used regularly. I also note that Mr McCarthy stated at the hearing that the overflow from the pumping station was dilute sewage.
- The appellant submits that it is unclear whether these works have fully resolved the issue.
- WCCC Heritage Officer notes that the AA Screening submitted by the applicant for PL93.248475 was assessed on the basis that the existing sewerage infrastructure in the area is working. Considers that there will not be potential for significant impacts on designated sites given the proposed measures to deal with foul and surface water. Concludes that the AA screening assessment and finding

of no significant effects report are adequate and appropriate to appraisal of impacts of that development on the Lower River Suir SAC.

- Submission to the hearing by Deborah D’Arcy, ecologist on behalf of the appellant, notes that there is potential for increased volumes of water to enter the River Suir as a result of PL93.248547 and there is potential for these waters to be polluted with raw sewage as a result of weaknesses in the foul sewer infrastructure and inadequacies in the surface water drainage design. There is a risk to aquatic species and habitats as a result of PL93.248547, which needs to be investigated further before any planning decision can be made, in particular those which are qualifying interests / conservation objectives of the Lower River Suir SAC. Notably the Annex I habitat Atlantic saltmarsh (1330), which occurs along the River Suir adjacent to the boundary of the appellant’s lands and adjacent to the outfall of the stream receiving surface water discharge from the appeal site and other developments in the area. Also potential negative impacts on conservation objectives of the SAC relating to Atlantic Salmon, Twaité Shad and Otter species and the Atlantic salt meadows habitat. The AA screening carried out by the applicant was based on information that WCCC has adequate foul drainage capacity for PL93.248547 and did not identify the pathway of surface water drainage across the appellant’s lands and to the outfall to the River Suir. Other deficiencies in the applicant’s AA screening are identified. Therefore, potential effects on the conservation objectives of the Lower River Suir SAC could not be ruled out.

6.3.3. Additional Assessment of Subject Development

With regard to surface water drainage, I note that the subject lands currently drain to the stream at the site and that the proposed attenuation system would reduce run off to the stream to below greenfield rate. The site of PL93.248547 does not discharge directly to the stream and that development therefore proposed to pipe additional runoff to the stream, albeit at an attenuated rate. That is not the case for the subject proposal. However, foul drainage from the subject development would discharge to the same public sewer as PL93.248547 and thence to the Island View pumping

station. I note the concerns presented at the Oral Hearing regarding the capacity of that station to cater for the combined foul and surface water contributions it currently receives and that any additional foul water flows contributing to the station could result in potential discharge of raw foul sewage at the appellant's lands, in close proximity to the SAC and in particular the Annex I Atlantic saltmarsh habitat. I note the Ecological Impact Assessment Report (October 2016) submitted by the applicant, as summarised in my report on file dated 4th October 2017, which considers potential effects on the Lower River Suir SAC, with regard to its conservation objectives, in relation to impacts on water quality and aquatic species. The ecological report sets out species and habitats potentially effected and concludes that standard mitigation measures during construction and operation will ensure that any adverse effects are avoided. No direct or indirect residual effects or cumulative effects on the SAC are expected. However, that report is based on the premise that the foul sewage system in the area is operating effectively. The information subsequently obtained at the Oral Hearing of PL93.248547 indicates that the overflow pipe of the Island View pumping station is currently discharging dilute sewage to the Lower River Suir SAC. Any additional foul loading on the station could exacerbate this situation. This may have a direct effect on several qualifying interests of the SAC and consequently on its conservation objectives.

I therefore concur with the assessment of the Inspector's report of PL.93.248547, i.e. that significant effects on the designated site cannot be ruled out and in conclude, on the basis of the information available, that a Stage 2 AA screening would be required with regard to the precautionary principle. In addition, given the lack of clarity regarding the nature of the existing outflow to the SAC from the Islandview pumping station, the outcome of such a Stage 2 screening is uncertain.

On the basis of the information provided with the application, the appeal, the response to the section 137 notice and in view of the recent decision of PL93.248547 and 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 European site No. 002137, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

In addition, in view of the new issues that have arisen in relation to potential effects on a designated site, if the Board is minded to grant permission, it may wish to refer the case to the following prescribed bodies under article 28 of the Planning and Development Regulations 2001-2015:

- Development Applications Unit, Dept. of Culture, Heritage & the Gaeltacht
- The Heritage Council
- An Taisce

7.0 **Recommendation**

7.1. Having regard to the above assessment, I recommend that planning permission be refused, for the reasons and considerations as set out below.

7.2. **Reasons and Considerations**

1. Having regard to the lack of permeability for pedestrians and cyclists and to the poor quality of the residential layout and design, which is in conflict with the Design Manual for Urban Roads and Streets and the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas issued by the Department of the Environment, Heritage and Local Government in May, 2009, it is considered that the proposed development would seriously injure the residential amenities of the area and the residential amenities of future occupants and would, therefore, not be in accordance with the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application and appeal, and in particular having regard to the uncertainties regarding the adequacy of the sewerage proposals for the development, and the in-combination effects of sewage overflows from this and other residential developments in the area, and 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 Lower River Suir Special Area of Conservation (Site Code 002137) in view of

the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

Sarah Moran
Senior Planning Inspector
31st January 2018