



An
Bord
Pleanála

Inspector's Report ABP 300716-18

Development	Construction of 44 residential units. New entrance off public road, pedestrian crossing and all associated site works.
Location	Clonlatin Lower, Gorey, Co. Wexford.
Planning Authority	Wexford County Council.
Planning Authority Reg. Ref.	2017/1380.
Applicants	Garrydaniel Property Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellants	Garrydaniel Property Limited.
Observers	1. Erika & Noel Chambers. 2. The Residents of Clonatin Lower.
Date of Site Inspection	26 th April 2018.
Inspector	Dáire McDevitt.

1.0 Site Location and Description

- 1.1 The site is located on the western side of the R772 (Arklow road) to the north of Gorey town centre. The area is characterised by commercial developments and some residential ribbon development. To the east of the R772, off the R742, there are a number of residential housing estates (Hazelwood, Clonattin, etc).
- 1.2 The site, with a stated areas of c.1.76 hectares, runs from southwest to northeast. It is long, narrow and roughly triangular in shape with its most narrow point adjoining the rail bridge to the south.
- 1.3 It is bounded to the west by the Dublin-Rosslare rail line with a number of residential properties and a playschool on the western side of the rail line. This boundary consists of a fence, brambles and intermittent vegetation exposing the site from the adjoining rail line, which is c.1m elevated above the ground level of the site. The detached houses to the west of the rail line have limited boundary treatment and are also exposed from the rail line. To the south is a rail bridge, the R772 (Arklow road) forms the eastern and southern boundary and is screened from the site by extensive trees and mature vegetation which are part of a public landscape bund that has been incorporated into the site. There are no views into the site from the R772. To the north, the site is bounded by a two storey house with its gable to the site. Opposite the site is the Rectory, a former Church of Ireland Glebe House, set within landscaped gardens. Along the R772 to the northeast is a petrol station and a number of detached residential properties. Opposite the site is the junction with the R742.
- 1.4 The ground levels are relatively flat within the site. The road levels along the front of the site drop from northeast to southwest towards the bridge, resulting

in the southern section of the site being elevated above the R772. Some ponding was observed on the southern section of the site.

- 1.5 There is an existing opening into the site at the northern corner of the site. A vehicular access is proposed off the R772 at a central point along the roadside boundary which consists of mature trees. A pedestrian crossing is proposed across the R772 at the southern section of the site, adjoining the bridge. A roundabout is indicated on the site layout plan, but outside the application site boundaries, to replace the existing junction of the R772 and R742.

2.0 Proposed Development

- 2.1. The proposed residential development would consist of:

44 Residential Units:

- 20 No. 3 bed two storey terraced units.
- 4 no. 3 storey blocks consisting of:
 - 12 no. 2 bed ground floor apartments.
 - 12 No. 3 bed duplex.

Unit Mix:

House type A: 20 no. 3 bed terraced (gfa c.120sq.m).

House Type B: 9 no. 2 bed apartments (ground floor) (gfa c.75/78sq.m).

9 no. 3 bed duplex (above) (gfa c.110/118sq.m).

House Type C: 3 no. 2 bed apartments (ground floor) (gfa c. 75/78sq.m).

3 no. 3 bed duplex (above) (gfa c.110/118sq.m).

Private open space:

- 2 bed units (c.18sq.m).
- 3 bed duplex (c.18sq.m).

- 3 bed terraced units (c.85 to 122sq.m)

Phasing:

Phase 1: The northern portion of the site, consisting of 18 units (1 apartment block with 6 units and 12 houses (3 terraces of 4 units)) and the main vehicular access and road.

Phase 2: The southern portion of the site, consisting of 26 units (3 apartment blocks with a total of 18 units and 8 houses (2 terraces of 4 units)) and pedestrian crossing.

Density: 25 units per hectare.

The application documentation includes:

- Architects report and Urban Design Statement.
- Artists Sketches.
- Pre-planning documentation and correspondence.
- Landscape report.
- Engineers reports (services).
- Lighting design report.
- A letter from Wexford County Council Housing Section relating to Part V proposals for the transfer of four units.

3.0 Planning Authority Decision

Refuse permission for the following reason:

The site is located on lands with a land use zoning of 'commercial' under the Gorey Town & Environs Local Area Plan 2017-2023. Residential use is 'Not Normally Acceptable' in an area with this land use zoning. The proposed development would materially contravene this land use zoning in the Local Area Plan and, therefore, would be contrary to the proper planning and sustainable development of the area.

3.1. Planning Authority Reports

3.1.1. Planning Reports

This formed the basis for the Planning Authority's reason for refusal. The main points are summarised below:

- The land use zoning and associated land use matrix changed in the Gorey Local Area Plan 2017-2023 from that in place at the time of preplanning.
- Residential development is not normally acceptable on lands zoned under land use objective 'C' (Commercial). The proposal would materially contravene the Local Area Plan.
- The site is located within the designated Clonattin Neighbourhood Framework Plan boundaries.
- No detailed comments on the proposed layout, density, public open space provision etc.
- A Tree Survey would be required to be carried out for the site.
- Reference to technical reports and recommendations contained in them (see section 3.1.2 below).
- Appropriate Assessment Screening report concluded that a stage 2 AA was not required.

3.1.2. Other Technical Reports

Area Engineer. Further information was recommended as follows:

- The Surface water drainage system should be redesigned to discharge directly to the open channel along the railway as the existing surface water system under the bridge would not be able to take additional flows.
- Special levy for pedestrian crossing and roundabout should be attached.
- The proposed cycle path/footpath should terminate at the crossing point. As extending it towards the railway bridge could lead to pedestrians attempting to cross where there are no sight lines.

Fire Officer. This sets out the fire requirements that are required to be complied with.

Disability Access Officer. Further Information recommended regarding access to units.

3.2. Prescribed Bodies

Department of Culture, Heritage and the Gaeltacht. No objection subject to pre-development archaeological testing.

Iarnrod Eireann. No objection subject to conditions relating to set back, boundary treatment, access for maintenance, etc.

3.3. Third Party Observations

Two submissions were received by the Planning Authority from the current observers to this appeal. The issues raised are broadly in line with those in the observations and shall be dealt with in more detail in the relevant section of this report.

4.0 Planning History

None as per the Planning Authority's online registry.

5.0 Policy Context

5.1. Gorey Town and Environs Local Area Plan 2017-2023

Section 11.2 Land Use Objectives

The site is zoned under land Use objective '**C' Commercial** "***To provide for a mix of commercial uses***".

The purpose of this zoning is to provide for a range of commercial and other uses. Such uses may include office developments, technology/research

facilities and light industry, provided it is compatible with the surrounding uses and is of a high quality design.

A high quality design and layout will be required for the undeveloped commercial zoned lands on the Courtown Road and at Ballytegan on the R772 so as to deliver individual buildings of modern design surrounded by landscaped areas, pedestrian ways, cycle ways, areas of passive open space and buffer zones along public roads. Car parking shall be provided in screened areas or underground to ensure minimum visual impact. An integrated approach to signage will also be required.

Residential development is N (Not Normally Acceptable) on lands zoned under land Use Objective 'C' as per the Land Zoning Matrix.

Development that is classified as 'Not Normally Acceptable' in a particular zone is one that will not be permitted by the Council, except in exceptional circumstances. This may be due to its effects on existing or permitted uses, its incompatibility with the objectives contained within this Plan or the fact that it may be inconsistent with the proper planning and sustainable development of the area.

Section 3 sets out the Urban Design Strategy for the town and environs.

Section 4 relates to the Access and Movement Strategy.

Appendix 1- Town Centre Neighbourhood Framework Plan.

The site is located within the **Clonattin Neighbourhood Framework Plan (NFP)**.

5.2 Wexford County Development Plan 2013-2019

Chapter 3. Core Strategy

Section 3.4.6 of the Settlement Strategy. Gorey is identified as a larger town in the Wexford Settlement.

Section 17.6 Urban Design guide.

Section 18.10 sets out the relevant development management standards for residential developments in towns and villages.

Section 18.29 refers to transport requirements.

5.3 **Project Ireland 2040 - National Planning Framework**

The recently published National Planning Framework includes a specific Chapter, No. 6, entitled 'People Homes and Communities'. It includes 12 objectives (Objectives 26 to 37) among which **Objective 27** seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages. **Objective 33** seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. **Objective 35** seeks to increase densities in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

5.4 **Guidelines**

Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities. (DHPLG 2018). These provide recommended minimum standards for floor areas for different types of apartments; storage spaces; sizes of apartment balconies/patios and room dimensions for certain rooms.

Sustainable Urban Housing: Design Standards for New Apartments Guidelines. (DECLG 2015). These provide recommend minimum standards for floor areas for different types of apartments; storage spaces; sizes of apartment balconies/patios and room dimensions for certain rooms.

Sustainable Urban Residential Development Guidelines (DoEHLG 2009) and its companion, the **Urban Design Manual - A Best Practice Guide (DoEHLG 2009).** These include detailed advice on the role of Urban Design and planning for new sustainable neighbourhoods. In cities and larger towns, appropriate locations for increased densities, are identified, including outer suburban greenfield sites and public transport corridors.

Quality Housing for Sustainable Communities (DoEHLG 2007). These are intended to assist with the implementation of initiatives for better homes, better neighbourhoods and better urban spaces. Detailed space requirements are set out and room sizes for different types of dwellings.

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been lodged which seeks to address the Planning Authority's reason for refusal. This can be summarised as follows:

6.1.1 Material Contravention:

- The material contravention wording applied in Reason No. 1 only applies to Development Plans and not to Local Area Plans and the ability of the Board to consider this appeal is not fettered by the inclusion of the words 'materially contravene' in the reason for refusal.

- The applicants engaged in extensive pre-planning with the Planning Authority. Under the previous Local Area Plan (2010 Plan) the site was zoned under land use objective 'Commercial and Mixed Use' with residential development 'open for consideration' under this land use objective. At no stage during the pre-planning process were the revisions to the land use zoning objectives for the site raised or the implications this would have for an application for residential development on the site.
- The proposal should not be considered a material contravention of the plan as residential development is not normally acceptable unless in exceptional circumstances under land use objective 'C'. The applicants are of the view that the current proposal should be considered 'exceptional circumstances' due to the lack of residential development in the area and an oversupply of commercial development in the area.
- Reference to Paul Maye-v-Sligo County Council (2006 No. 1347JR) and Clarke J statement that: 'The question of what constitutes a material contravention of a development plan needs to be approached in two parts. Firstly, the proposed development must be in contravention of the Development Plan. Secondly, the manner in which it is in contravention of the Development Plan must be material.'
- It is considered that the proposed development is neither a contravention of the Local Area Plan nor would it be considered material in the context of the surrounding land uses such that, if developed, the development would be inconsistent with the existing developments in the immediate vicinity.
- It is also noted that there is a significant quantum of commercial development including a number of vacant commercial units in the vicinity, of the site which sits just outside of the town centre and also that there is an imbalance in this area between the commercial/retail/industrial and the number of residential units that they serve. In the applicant's opinion, the proposed development would act as a catalyst for the development of a new residential quarter to the northeast of the town centre. In that context

the development of housing on this site will not materially contravene the Local Area Plan.

- The only objection by the Planning Authority to the proposed residential scheme arose from the changes to the zoning matrix in the 2017 Gorey Local Area Plan, where residential went from 'open for consideration' to 'not normally acceptable'.

6.1.2 Other:

- There is a demand for housing within Gorey, especially to the north of the town where the site is located.
- The design and layout of the scheme was designed on foot of the extensive pre-planning consultations and was considered acceptable by the Planning Authority.
- The site complies with the sequential approach, located close to transport routes and proximate to the town centre, retail, educational and social/community facilities.
- It would consolidate residential development in line with the orderly expansion of the northeast of the town.
- The proposal would cater for the social housing need provision in the town. At present the only Local Authority housing planned is for 9 houses at Baile Eoghan.

6.2. Planning Authority Response

The Planning Authority had no further comments to make. The Board is referred to the original Planners Report.

6.3. Observations

Two observations were received:

- The Residents of Clonatin Lower (Roislin Ni Chiarbhain, Billy Halford, Eileen Daly, Noel Chambers, Erika Chambers, Caroline McDonald, Derek McDonald and David Allen), Clonatin Lower, Gorey, Co. Wexford.

- Erika & Noel Chambers c/o Erika's Montessori Playschool, Castlerock, Clonatin Lower, Gorey, Co. Wexford.

There is a degree of overlap between the issues raised in the two observations. These are summarised below:

6.3.1 Material Contravention of the Plan.

- The site is located in an area which is zoned for commercial and mixed use. A residential development at this location would materially contravene this land use zoning objective.
- The Local Area Plan was on display and the applicant had numerous professional in his employment that should have been aware of the changes and advised their client accordingly.

6.3.2 Design & Impact on adjoining properties.

- Overlooking of adjoining residences and gardens. In particular, the proposed three storey block of apartments would directly overlook the playschool giving rise to privacy and Health & Safety concerns.
- The construction of a wall to protect the privacy of the children would result in loss of light as it would need to be c. 4/5 metres in height.
- Photographs have been submitted to illustrate the views from windows in the Observers house that would be affected.
- The proposed development could remain vacant and an eyesore due to lack of demand for this type of housing in the area.
- Some units do not comply with Part M of the Building Regulations.
- The house types are not consistent with those cited as examples in the appeal documentation.
- The location of the sewage pumping station opposite the house and playschool would have an adverse impact due to associated noise and smells.

6.3.3 Traffic

- The proposal would result in a traffic hazard due to increased traffic movements associated with the proposed development.
- The pedestrian crossing and a roundabout, shown on a blind bend under the railway bridge, which would result in a serious traffic hazard.
- The development would be entirely car dependent due to the distance from shops, schools, sports clubs, etc.

6.3.4 Flooding.

- There is currently severe flooding under the bridge, the proposed development would further exacerbate this situation.

6.3.6 Density

- The proposed density of development is too high.

6.3.5 Validity of the Planning Application.

- The Application is invalid as the incorrect address is stated in the public notices.
- Incorrect and misleading information was submitted with the application regarding commercial development in the area and distances from the site.
- Query the site dimensions on the plans submitted.

Request that the Planning Authority's decision to refuse permission be upheld.

If permission is granted, the observers have requested that the proposed apartment block in the southern section of the scheme be omitted.

6.4. Further Responses

Correspondence received from an observer relating to delays in dealing with the file.

7.0 Assessment

The first party appeal is seeks to address the Planning Authority's reason for refusal. I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings:

- Land Use Zoning.
- Appropriate Assessment.

7.1 Land Use Zoning

7.1.1 The Planning Authority's reason for refusal was on the premise that the site is located in an area with a land use zoning of 'C' (Commercial) under the Gorey Town and Environs Local Area Plan 2017-2023. And that the proposal for residential development in an area with such a land use zoning would materially contravene this objective.

7.1.2 Residential Use is classified as 'not normally acceptable' on the relevant lands. The 2017 Local Area Plan sets out that development that is classified as 'Not Normally Acceptable' in a particular zone is one that will not be permitted by the Council, except in exceptional circumstances. A use may be considered 'not normally acceptable' due to its effects on existing or permitted uses, its incompatibility with the objectives contained within this Plan or the fact that it may be inconsistent with the proper planning and sustainable development of the area.

7.1.3 The applicants have set out in detail in the appeal that the proposed development has been the subject of extensive pre-planning consultations with a number of departments within the Council and that at no stage were the changes to the land use zoning under the 2017 Plan and the implications for the site highlighted by the Council's officials.

- 7.1.4 Notwithstanding, the application before the Board must be assessed in the context of the policies and objectives for the site under the current Gorey Town and Environs Local Area Plan 2017-2023 and the Settlement Strategy as set out in the Wexford County Development Plan 2013-2019.
- 7.1.5 I have examined a number of Wexford County Council's Land Use Plans and I am satisfied that the use of the term 'not normally acceptable' is used by Wexford County Council in its land use plans and associated land use matrices and equates to the term 'not permitted' used by other Planning Authorities. I have examined the Local Area Plan and there is no definition for 'exceptional circumstances' or reference to criteria to determine what constitutes 'exceptional circumstances'. The reference to 'exceptional circumstances' while somewhat ambiguous does not, in my view, include the current scenario. The site has not been identified to be of strategic importance, it is not located with the core residential area and it would not consolidate existing residential development. As noted above, residential development is 'not normally acceptable', therefore is neither 'permitted in principle' nor 'open for consideration' in C zoned areas. The proposed development, therefore, would contravene the current land use zoning objective for the area.
- 7.1.6 The Core Strategy sets out the Settlement Strategy for the country. This identified the locations and requirement for new residential zoned lands where residential development is directed to cater for the needs of the county. I note that residential development was previously 'open for consideration' under the 'commercial & mixed use' land use zoning objective in the 2010 Local Area Plan. This was amended under the 2017 Local Area Plan reflecting the requirements of the town for the period of the Plan, 2017 to 2023, taking into account population projections, service capacity, infrastructure requirements and the sustainable development of the area.

- 7.1.7 The appellants consider that the current application of such zoning provisions is unreasonable in light of the previous zoning objectives for the area, the oversupply of commercial development and the substandard quantum of residential development on the northern side of Gorey town.
- 7.1.8 I noted on the day of inspection there are a number of residential units (predominantly single detached houses) in the immediate area and that the site is bounded by residential zoned lands which appears to predominantly relate to existing residential uses. The site is located to the north of the main commercial area for the town (Land Use Objective 'CBA' (Central Business Area)). I am not convinced by the applicant's argument that there is no requirement for additional commercial zoned lands at this location. The site, located along a main access route (R772) opposite the junction with the R742, has been clearly identified as a suitable location to provide for a range of commercial and other uses.
- 7.1.9 The site is zoned 'commercial' with the objective to *To provide for a mix of commercial uses*. Residential development is not normally acceptable under this land use zoning objective and to permit a residential development at this location would directly contravene the zoning objective at this location as set out in the Gorey Town and Environs Local Area Plan 2017-2023 and would, therefore, be contrary to the proper planning and sustainable development of the area.
- 7.1.10 The Board will note that Reason Number 1 of the decision of Wexford County Council to refuse planning permission for the proposed development states that the proposed development would materially contravene the Gorey Town and Environs Local Area Plan 2017-2023. The applicant has outlined in the grounds of appeal that the material contravention wording applied in Reason No. 1 only applies to Development Plans and not to Local Area Plans and the ability of the Board to consider this appeal is not fettered by the inclusion of the words 'materially contravene' in the reason for refusal. I refer the Board to Section 37 (2)(b) of the 2000 Planning and Development Act (as amended).
- 7.1.11 As the principle of residential development is not acceptable at this location I do not propose to assess the merits of the proposed residential scheme and its

compliance with the relevant development management and design standards for residential developments in towns.

7.2 Appropriate Assessment

Having regard to the nature and scale of the proposed development and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. Having regard to the zoning provisions of the Gorey Town and Environs Local Area Plan 2017-2023 for the area within which the site is located, 'Objective C.'– (Commercial), it considered that the proposed residential development would be contrary to the policies and objectives aimed at promoting commercial uses at this location. The proposed development would contravene materially the commercial land use zoning objectives as set out in the Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

Dáire McDevitt
Planning Inspector

20th July 2018