



An
Bord
Pleanála

Inspector's Report ABP.302310-18

Development	Construction of 24 no. houses
Location	Crosstown, Ardavan, Co. Wexford.
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20180713
Applicant(s)	H & R Chartered Homes Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Parties
Appellant(s)	Michael Brennan, John Molloy
Observer(s)	None
Date of Site Inspection	17 th October 2018
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The appeal site is located on the northern outskirts of Wexford town in a semi-rural setting.
- 1.2. The appeal site is currently an agricultural field used for tillage.
- 1.3. The size of the appeal site is approximately 3.30 ha (8.15 acres) and the shape of the appeal site is approximately rectangular.
- 1.4. There are currently 3 no. houses under construction to the immediate south of the appeal site. There is a newly completed housing development of 10 no. houses located to the immediate east of the appeal site. These houses are sizable detached houses comprising of both 2-storey and single storey units.
- 1.5. The wider area is characterised by individual houses situated on sizeable plots to the south and agricultural fields to the north of the appeal site.

2.0 Proposed Development

- 2.1. Planning Permission is sought for the construction of 24 no. detached houses.
- 2.2. The proposed development will be accessed from an established access road which provides access onto the Crosstown Road. The established access road serves a recently constructed housing development located to the immediate east of the appeal site.
- 2.3. The proposed housing development provides for 6 no. house types as follows;

<u>House Type</u>	<u>Height</u>	<u>Floor Area</u>	<u>No. of bedrooms</u>
A	Two-storey	190 sq. m.	4
B	Single storey	170 sq. m.	4
C	Single storey	192 sq. m.	4
D	Single storey	189 sq. m.	4
E	Two-storey	191 sq. m.	4
F	Two-storey	197 sq. m.	4

- 2.4. Private open space is in the form of rear gardens. The proposed development provides for six separate areas of public open space to serve the housing development.
- 2.5. It is proposed that the houses will be connected to the public sewer and public water mains.

3.0 **Planning Authority Decision**

- 3.1. Wexford County Council decided to **grant** planning permission subject to 20 no. conditions. All the conditions are standard for the nature of the proposed development.

3.2. **Planning Authority Reports**

- 3.2.1. The main issues raised in the planner's report are as follows;

Area Planner

- Appeal site is zoned residential. Proposal acceptable in principle.
- There is a vehicular and pedestrian access to Crosstown Road.
- There are 6 no. house designs proposed.
- The suggested density is 7 units to the ha.
- 10% public open space has been provided.
- All gardens meet the minimum required private open space provision.
- Five of the proposed houses can be easily adapted for disabled users.
- Part V compliance.
- It is unlikely that there will be any adverse impacts on Natura 2000 sites.

3.3. **Internal Reports;**

- Area Engineer; - Grant recommended subject to conditions.

- Environment; - Grant recommended subject to conditions.
- Fire Officer; - Compliance with Fire Regulations required.

3.4. Third Party Observations

There are three third party submissions and the issues have been noted and considered and are generally similar to the issues raised in the third-party appeals.

3.5. Submissions

- None

4.0 Planning History

- No planning history on the appeal site.

Site to the immediate east of appeal site.

- L.A. Ref. 20150620 – Permission **granted** for the construction of 10 no. detached houses subject to 19 no. conditions.

5.0 Policy Context

5.1. Development Plan

5.1.1. Wexford Town and Environs Development Plan, 2009 – 2015, is the operational Development Plan.

5.1.2. In accordance with the Town Plan the appeal site is zoned 'Medium Residential'. The objective for this land-use zoning is *'to protect and enhance the residential amenity of existing and developed communities'*.

5.1.3. Paragraph 11.08.01 sets out guidance on 'Residential Density'.

6.0 National Policy

6.1. National Planning Framework, 2018

The National Planning Framework, 2018 – 2040, recommends compact and sustainable towns / cities, brownfield development and densification of urban sites. Policy objective NPO 35 recommends increasing residential density in settlements including infill development schemes and increasing building heights.

6.2. Sustainable Residential Development in Urban Areas, 2009

The Guidelines promote higher densities in appropriate locations. A series of urban design criteria is set out, for the consideration of planning applications and appeals. Quantitative and qualitative standards for public open space are recommended. In general, increased densities are to be encouraged on residentially zoned lands, particularly city and town centres, significant 'brownfield' sites within city and town centres, close to public transport corridors, infill development at inner suburban locations, institutional lands and outer suburban/greenfield sites. Higher densities must be accompanied in all cases by high qualitative standards of design and layout. Chapter 6 sets out guidance for residential development in small towns and villages.

7.0 The Appeal

7.1. The following is the summary of a third-party appeal submitted by Peter Thomson, Planning Consultant, on behalf of Michael Brennan.

- The applicant has carried out unauthorised works that would require an application for retention permission. As such the Board is precluded from granting permission.
- The unauthorised works involve infilling part of a former marl hole to facilitate the provision of an access road.
- It is submitted that it is difficult to understand how the Board will consider precise ecological and wildlife concerns of the appellant and address them.

Natura Impact Statement

- It is submitted that the actions of the applicant in carrying out works without planning has nullified the NIS.
- It is submitted that the marl hole would have to be drained in the new proposed attenuation tanks before passing through interceptors and then discharging to the drainage network.
- It is submitted that the entire body of water has been discharged from the marl hole with unknown consequences for the SAC and SPA.
- It is considered that a remedial NIS is required.
- It is considered that the NIS is deficient in a proper assessment of cumulative impacts of the proposed development with other natura 2000 sites in the local area.
- There is no regard to any improvement works which may be required along the length of the hydrological pathway.
- It is contended that the unauthorised infilling of the marl hole has resulted in the loss of a valuable local habitat and a number of species, including protected species.
- It is contended there were badgers in the marl hole. Badgers are protected species under the Irish Wildlife Acts, 1976 and 2000. Frogs were also present in the marl hole which are also protected species.
- The marl hole was also home to moorhens. The woodland habitat that moorhens live in are afforded protection.
- It is contended that tree felling was undertaken during the period 1st March to 31st August which is during the bird nesting season and is prohibited.

Other development granted permission by Wexford County Council

- The permission to grant permission is inconsistent with other decisions for similar developments in the vicinity.

- The Council refused permission (L.A. Ref. 2018/0587) for 99 no. houses on a site immediately opposite the access road to serve the proposed development. The reasons for refusal included (a) the surface water drainage proposals required downstream works which are uncertain in scope and there is potential for flooding on third party lands, (b) given the proximity of the proposals to the SAC / SPA and associated pathway for surface water to drain into these habitat sites and the absence of a surface water disposal system.
- The proposed drainage system includes surface water draining to an open drain to the south-east corner of the site which flows through developed and undeveloped lands to the south. This therefore has the potential to create flood risk for 3rd party lands.
- Improvement works are likely to be required to the surface water route leading to the SAC / SPA.
- A more logical surface water solution would be to drain the application site in conjunction with zoned lands. This would involve using the open drainage network and piped drains along the R741. This network will be upgraded as part of the R741 Phase 2 upgrade works.

Infrastructure

- The local area lacks footpaths.
- It is contended that the local zoning provisions in Crosstown are outdated as the development plan has expired.
- Development Plan proposals include an additional river crossing and upgrade of the R741. This would provide for access to the appeal site from the north and would avoid the removal of the marl hole.

7.2. The following is the summary of a third-party appeal submitted by **John Molloy**;

Flood Risk

- The flooding issue has not been adequately addressed. Wexford County Council and An Bord Pleanála have adequately dealt with this issue in a recent planning decision. (appeal ref. 249001).
- Flooding occurred in a new area in Winter 17/18.
- The slope on the public road contributes to the flooding. On the opposite side of the public road there is the River Slaney.
- It is contended that any further development would exacerbate the already severe flooding issue.
- There is no surface water drainage to the system.

Access

- The access road onto the R741 offers poor sightline provision.
- The short road from the site to the R741 is narrow.
- It is contended that the road infrastructure is not safe, adequate or suitable.
- It is contended that the proposed entrance is onto a busy road and any further turning traffic onto the R741 could increase road traffic accidents.
- The R741 is at full capacity at peak times.
- Emergency services are struggling to get through the very heavy traffic on the only bridge in Wexford.
- There is no evidence of any detailed traffic modelling.
- It is submitted that there are ten garage businesses within 1.5km of the site. Car transporters parked temporarily along the R741 increases significant traffic hazards.
- There is inadequate footpath provision.
- There is a lack of public transport provision locally.

- There is a lack of a cycle lane provision from the town.
- There are no schools, childcare, supermarkets within 5k of the appeal site.
- There is an excessive number of planning permissions granted for houses locally.
- There is no consideration to the nearby Wildfowl Reserve and the potential impacts of light pollution.

NIS

- The estimated levels of spoil generated is very low.
- Earth mountains have been created on nearby sites. This practice increases pollution events.
- It is contended that the mitigation measures are generic and lack site specific detail.
- Details of the construction stage are unclear.
- Japanese knotweed is a problem in the local area.

8.0 Responses

Second Party Response

The Local Authority submitted a response stating that they had no further comments.

First Party Response

The following is a summary of a first party response to the appeal from **John Molloy**;

Surface Water Drainage / Flooding

- It is contended that permission for appeal ref. 249001 was refused for different reasons than surface water drainage. In appeal ref. 249001 permission was refused as the proposal required downstream work of

uncertain scope on third party lands. The current application does not require work outside the site boundary.

- The appellant's argument in relation to flood risk is unfounded. The submitted photographs illustrate flooding situated to the north-west of the appeal site however the hydrological pathway for surface water flows from the south-west corner of the site in a southerly direction.
- Surface water drainage complies with SUDS with appropriate attenuation. The proposed surface water will be restricted to greenfield flow rates. The appellant's argument that the proposal will exacerbate flooding is unfounded.
- Section 7.3 of the enclosed site-Specific Flood Risk Assessment confirms that the proposed development is not hydrologically linked to the locations referred to in the appeal submission.

Traffic

- The appellant raises issues in relation to traffic levels and improper use of the R741. This is not an issue for the Board.
- As part of the permission granted under appeal ref. 247934 the Planning Inspector noted the proposed road upgrade works associated with individual developments and development contributions. Details are indicated in Appendix 1.
- The landowner in this case (appeal ref. 247934) ceded land to the Road's Authority to accommodate a safer 90-degree junction with the regional road. (Indicated in Appendix 1).
- As such road improvements are continually carried out in the local area.
- The R741 is served by Wexford Bus route 877, which connects Wexford to Castlebridge.

Social Infrastructure

- The entire town of Wexford is within a 5km radius of the appeal site. The appeal site is located 2km from Wexford Town Centre. There is a full range of social infrastructure available.

Density / Scale

- The proposal is consistent with the planning objectives for the Wexford environs.

NIS

- The claim that the Planning Authority did not adequately consider the NIS is unfounded.
- The AA has had regard to internal reports and as such adequately considered the NIS.

Response to appeal from John Molloy

- It is submitted that the aerial context map submitted by the appellant is inaccurate, in particular site boundaries for planning ref.s 2015/0633 and 2015/0620.
- Both above permissions include part of the cleared scrub area. There is overlap between the boundaries of these permissions and the current application.
- It is submitted that there are two separate processes that cannot be combined, i.e. one part of the Act cannot be used for the purposes of another. As such the Local Authority have issued a Warning Letter to the applicant in relation to possible unauthorised works and this issue will be investigated in due course. An appeal cannot be used to further a compliant under Part VIII of the Act.

- The response from Verde Environmental Consultants adequately addresses concerns that the ground works have nullified the NIS.
- It is submitted that it is speculation that improvement works will be required along the length of the hydrological pathway. This argument is submitted unfounded.
- The proposal will release surface water at greenfield rates into the existing drainage network. The application was considered adequate by the Local Authority.
- Proposed attenuation and hydro brakes provided in accordance with SUDS will ensure that no cumulative effects will take place and no need for improvement works along the hydrological pathway.
- It is submitted that the argument that the reasons to grant permission are inconsistent with the reasons for refusal in L.A. Ref. 2018/0587 are unfounded. Refusal was issued as the proposed works included draining surface water to a surface water drain along the R741 which needs upgrade. This would not apply to the current application.
- The access arguments submitted by the appellant is speculation.

9.0 **Assessment**

- Principle of Development
- Density / Scale
- Residential Amenities
- Traffic / Access
- Surface Water
- Appropriate Assessment
- Other Issues

9.1. **Principle of Development**

- 9.1.1. The appeal site zoned 'Residential – Medium Density'. The zoning objective is '*to protect and enhance the residential amenity of existing and developed communities*'.
- 9.1.2. The recently adopted National Planning Framework¹ (NPF) recommends compact and sustainable towns / cities, brownfield development and densification of urban sites. The themes of compact and sustainable development are reinforced by policy objective NPO 35 from the NPF as this policy recommends increasing residential density in settlements including infill development schemes and increasing building heights. It is national policy, (i.e. Sustainable Residential Development in Urban Areas, 2009), to promote residential densities in urban areas in close proximity to services and public transport.
- 9.1.3. Therefore, I would consider, having regard to the zoning objective pertaining to the appeal site and national planning policy that the principle of the proposed development is acceptable provided that the proposal has adequate residential amenity, adequately safeguards the amenities of the adjoining properties, would not result in a traffic hazard, protects the environment, and would be in accordance with the provisions of the Wexford Town and Environs Development Plan, 2009 – 2015.

9.2. **Density / Scale**

- 9.2.1. The Wexford Town Development Plan, 2009 – 2015, sets out guidance in relation to residential density in Section 11.08.01 of the Town Plan. The appeal site is zoned 'Residential – Medium Density' and accordingly the indicative residential density for the appeal site is 17 – 25 units per ha.
- 9.2.2. The overall size of the appeal site is 3.30 ha and therefore the density for the proposed development is approximately 7 units per hectare. This proposed residential density is significantly lower than the indicative residential density as set

¹ Adopted 16th February 2018

out in the Town Development Plan. I note that the shape of the site includes an established access road of approximately 140 metres in length which is effectively removed from the main body of the appeal site. I would estimate that should the access road be removed from a density calculation that the proposed density would be approximately 7.6 units per hectare.

9.2.3. Separately I would note that having regard to the pattern of development in the local area that the established residential density is generally low.

9.2.4. In relation to the Sustainable Residential Development for Planning Authorities, 2009, I would consider that paragraph 5.11 is most relevant to the proposed development. Paragraph 5.11 recommends that in outer suburban greenfield sites in cities and larger towns that densities of 35-50 dwellings per hectare are recommended. As outlined above the residential density of the proposed development would be below this guidance. The guidelines state that development at net densities of less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5ha.

9.2.5. Paragraph 5.12 of the Sustainable Residential Development for Planning Authorities, 2009, is relevant as this allows for the provision of lower densities in limited cases.

9.2.6. I would consider that an examination of potential densities achievable on the appeal site highlights a significant housing provision shortfall. In this regard the number of houses proposed is 24 units. However, should the proposal provide 35-50 dwellings per hectare then the overall housing development would be in the region of 116 – 165 housing units. Therefore, should the Board permit the residential density as permitted by the local authority it would amount to a shortfall of 92 – 153 units which is on average 122 units.

9.2.7. It is national guidance in accordance with the 'Sustainable Residential Development in Urban Areas, 2009', to promote and encourage higher residential densities where appropriate, i.e. within proximity to cities and towns and this is consistent with national policy in the National Planning Framework 2018. The proposed development, in my view, represents a significant shortfall in housing provision and in the absence of any demonstration or evidence that the proposed residential densities are justified I would conclude that the proposed development is contrary to national guidelines and national planning policy.

9.3. **Residential Amenities**

9.3.1. The private open space provision as proposed is generally generous as the plots for the individual houses are sizable. The minimum private open space provision, in accordance with the Section 11.08.06 of the Development Plan, for a house is 60 – 75 sq. metres. The proposed houses would generally exceed this minimum requirement.

9.3.2. The overall public open space provision to serve the proposed development is approximately 19% of the site area. This provision is generous and again would provide a good standard of residential amenity to future occupants.

9.4. **Access / Traffic**

9.4.1. The proposed vehicular access is onto an established access road which serves newly constructed housing development of 10 no. houses located to the immediate east of the appeal site. The access road is a newly constructed road and provides access onto Crosstown Road which is an established local road.

9.4.2. The sightline provision, based on a visual observation, onto the Crosstown Road is generally good in both directions. I would also note from a visual observation of the local area during my site inspection (weekday afternoon) that Crosstown Road is a lightly trafficked road.

- 9.4.3. I would note also that the Area Engineer, in his report dated 2nd July 2018, has no objections to the proposed development.
- 9.4.4. I note that the appellant raises concerns locally however some of these issues are outside the scope of the planning appeal.
- 9.4.5. Overall, I would consider that the proposed access is acceptable for the nature of the development proposed and that the proposed development would not generate significant traffic that would cause a traffic hazard.

9.5. **Surface Water Disposal**

- 9.5.1. It is proposed to discharge surface water from the development to a nearby watercourse on the site's western boundary. The surface water will pass through an oil/silt bypass separator, enter a surface water attenuation pond, and then discharge to a watercourse at a green field run-off rate. The submitted drawing no. 18-23B illustrates the surface water proposals.
- 9.5.2. I would note that both the Area Engineer and the Environment Section of the Local Authority consider the surface water proposals acceptable. As the proposed surface water drainage includes an attenuation tank and it is proposed to control surface water run-off to greenfield levels I would consider that the surface water discharge is acceptable. In addition the appellant raises concerns that the proposed development has no regard to the improvement works that would be required along the length of the hydrological pathway. The applicant has confirmed that there will be no improvement works proposed along the length of the hydrological pathway.
- 9.5.3. I have reviewed the submitted Site-Specific Risk Assessment and I would consider that this report adequately demonstrates that the proposed development will not amount to a flood risk. The report also adequately addresses concerns in relation to a hole on the appeal site which once held water. The hole on the site is now filled. The report states that the hole held water because a field drainage to the south of

the site was blocked and since the unblocking of the field drainage the hole has drained via the field drainage and towards the River Suir.

9.6. **Appropriate Assessment**

9.6.1. The proposed development is located some 400 metres from two designated Natura 2000 sites. The River Slaney SAC (site code 000781) and the Wexford Harbour and Slob SPA (site code 004076).

9.6.2. The qualifying interests for the River Slaney SAC are as follows;

- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
- *Margaritifera margaritifera* (Freshwater Pearl Mussel)
- *Petromyzon marinus* (Sea Lamprey)
- *Lampetra planeri* (Brook Lamprey)
- *Lampetra fluviatilis* (River Lamprey)
- *Alosa fallax fallax* (Twite Shad)
- *Salmo salar* (Salmon)
- *Lutra lutra* (Otter)
- *Phoca vitulina* (Harbour Seal)

9.6.3. The Wexford Harbour and Slob SPA (site code 004076) has 34 qualifying interests, all of which are birds. The habitat for these qualifying interests includes the River Suir which is located approximately 400 metres from the appeal site.

9.6.4. In asseing whether there are any impacts on the two aforementioned Natura 2000 sites a relevant consideration is the source-pathway-receptor model. There is a watercourse located adjacent to the western boundary of the appeal site and this watercourse flows in a southern direction towards the River Suir SAC. As such there

is potential for the proposed development to have impacts on the water quality of the SAC which is also a habitat for the Wexford Harbour and Slobbs SPA.

9.6.5. Section 5.2 of the NIS outlines features of interest that could be affected by the proposed development. Section 5.2 has identified the following qualifying interest of the River Suir as likely to be impacted by the proposed development.

- Estuaries
- Mudflats
- Sea Lamprey
- Atlantic Salmon
- Twaite Shad
- Otters

9.6.6. The above qualifying interests are identified based on their location in the River Suir relative to the proposed development. The sea lamprey, Atlantic salmon, twaite shad and otters are known to occur in Wexford Harbour which is slightly further downstream relative to the discharge point of the subject watercourse into the River Suir. I would note that Section 5.2 identifies poor water quality, caused by inadequately treated surface water or wastewater as the main concern to the qualifying interests.

9.6.7. Section 5.3 identifies 8 birds that use the mudflats adjacent to the discharge point of the subject watercourse. These mudflats are therefore within the zone of influence. The main potential adverse impacts on the mudflats would be caused by discharges of inadequately treated surface water or wastewater as the main concern to the qualifying interests.

9.6.8. Section 9 of the NIS sets out mitigation measures to prevent any adverse impacts occurring on the water quality of the River Suir SAC. I have reviewed these

mitigation measures and they include measures during both the construction and operational stage.

- 9.6.9. I would consider that the proposed surface water proposals that include an attenuation tank that limits surface water discharge to greenfield rates and also treats all surface water generated from impermeable surfaces within the project site would be a significant mitigation measure. This measure, in my view, would essentially eliminate concerns of discharge of inadequately treated storm water. The proposed development will be serviced by the public foul network which ensures that no untreated wastewater will enter the River Suir SAC. I would also conclude that the mitigation measures address any concerns during the construction stage which are likely to be the source of any adverse impact.
- 9.6.10. In addition, I would consider that as the impacts of the proposed development are essentially nullified by the mitigation measures the potential for cumulative effects are essentially removed.
- 9.6.11. I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site no. site code 000781 and site code 004076, or any other European site, in view of the site's conservation objectives.

9.7. **Other Issues**

- 9.7.1. The appellant has raised concerns in relation unauthorised works. However I would consider that these issues raised are generally enforcement issues, in accordance with Part VIII of the Planning and Development Act, 2000, and would be outside the scope of this appeal which relates to the proposed 24 no. houses. I would therefore consider that it is a matter to be raised with the local authority rather than An Bord Pleanala.

10.0 Recommendation

10.1. I have read the submissions on the file, visited the site, had due regard to the Town Development Plan, and all other matters arising. I recommend that planning permission be refused for the reasons set out below.

11.0 Reasons and Considerations

1. Having regard to the nature, scale and housing density of the proposed development, and the 'Residential – Medium' zoning objective, as per the Wexford Town and Environs Development Plan, 2009 – 2015, pertaining to the subject site the proposed development would be contrary to the zoning objective of the appeal site. Furthermore and having regard 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 (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 and of the infrastructure supporting it, would contravene Government policy to promote sustainable patterns of settlement and the draft policy provisions in the National Planning Framework, 2040, and would, therefore, be contrary to the provisions of the said Guidelines and national policy provisions. The proposed development would be contrary to the policy objective in the Wexford Town and Environs Development Plan, 2009 – 2015, and therefore, be contrary to the proper planning and sustainable development of the area.

Kenneth Moloney

Planning Inspector

16th November 2018