



An
Bord
Pleanála

Inspector's Report ABP-302586-18

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| Development | Amendments to Planning Permission Register No. 15/463, involving revisions to the original site boundaries |
| Location | Former Zed Candy Factory Site, Church Street, Kilcock, Co.Kildare |
| Planning Authority | Kildare County Council |
| Planning Authority Reg. Ref. | 18539 |
| Applicant(s) | Paul McCann Receiver of Waterside |
| Type of Application | Permission |
| Planning Authority Decision | Grant with revised Conditions |
| Type of Appeal | Third Party |
| Appellant(s) | Glengolden Builders Ltd. |
| Observer(s) | None. |
| Date of Site Inspection | 18 th of December 2018. |
| Inspector | Caryn Coogan |

1.0 Site Location and Description

- 1.1. The former Zed Candy factory site is located on the fringe of the town centre of Kilcock along Church Road. The general pattern of development in the area is mixed use, residential developments punctuated by commercial developments and a school. The site was formerly a factory site, the buildings of which were demolished leaving a large open hard surfaced site to the rear of a filling station and forecourt area. Currently the site is undergoing major construction activity, with phase one of a residential development almost complete and ready for occupation.
- 1.2. The rear of the site is bounded by the Royal Canal and tow path which is positioned at the higher level than the subject site. There is mature planting along the embankment between the rear site boundary and the canal.
- 1.3. The street/ roadside boundary includes two portions of land on both sides of the filling station along Church Street. The new development of houses is almost complete on the southern part of the site, with construction starting on the apartment blocks to the rear in the near future.
- 1.4. The site office, and an number of other houses currently under construction on the northern part of the site are accessed from an existing lane off Church Street immediately to the north of the filling station.

2.0 Proposed Development

- 2.1. The Statutory Receiver over certain asset of Waterside Kilcock Property limited (In receivership) has applied for planning permission on the 2.12Ha at the former Zed Candy factory site on Church Street. Co. Kildare. The following revisions are proposed:
 - Revisions to the southern part of apartment Block 2 to accommodate revised boundary line. No change to the proposed number of apartments, apartment types, bedrooms, bed spaces or car parking spaces. The proposed revisions result in a floor area increase from 94.8sq. to 99sq.m. in apartments 02-0.01, 02-1.01 and 02-2.01.

- Change of permitted finish on apartment blocks from reconstituted sandstone and zinc cladding with standing seams to buff coloured brick and powder coated metal cladding with standing seams.
- Change of permitted finish on front entrance porches to Type 3 houses to provide a consistent junction with the projected facades of the dwellings.
- Change of permitted finish of window/ door frames throughout from Alu-clad to uPVC, grey colour.
- Minor internal changes to permitted ground floor layout of Houses types 1, 2A, 3, 4 and 5 to improve the kitchen/ dining areas with consequent changes to rear facades.
- Corrections to anomalies in permitted documents
- Minor revisions to road levels and floor levels of houses and apartments to accommodate drainage gradients.

3.0 Planning Authority Decision

3.1. Decision

Kildare County Council granted the revisions to the permitted scheme subject to 4No. conditions:

1. The development to be carried out in accordance with the submitted documentation and the further information.
2. The proposed external storage sheds shall be erected prior to occupation of each of the dwellings
3. The development shall be carried out in accordance with Reg Ref. 15/463, and the expiry date of the permission is 4th of July 2021.
4. Development Contribution of €77,170

3.2. Planning Authority Reports

Planning Report No. 1

The majority of the changes to the permitted scheme are acceptable apart from the revised roof design on Apartment Block 2, and a number of units do not have sufficient internal storage. Further information is requested to include certain revisions and to address the third party submission concerns.

The further information is received on the 30th of July 2018.

Planning Report No. 2

- The flat roof design to Apartment Block 2 was unacceptable to the planning authority. A pitched roof was reinstated by way of further information on the canal side.
- Adequate storage provision associated with a number of dwellings includes the provision of a garden shed, and apartments provide storage provision in line with Sustainable Urban Housing: Design Standards for New Apartments.
- There was some confusion regarding House No. A03, which is a Type 3 House.
- The applicant has submitted sufficient legal interest to make the planning application.
- The third-party submission refers to works previously carried out under planning application 13/641 and has no relevance to current application.
- The wording of Condition No. 12 of planning reference number 15/463 is such that there is no requirement for construction of a road, footpath and services connections, but rather the development be carried out and completed to ensure a future road, footpath and services connection will be available. Condition No. 12 does not require prior written agreement, it merely requires future availability related to the completed development.
- The red line defining the site on foot of the permission which excludes the area assigned for the future road, footpath and service connections.
- It is stated there is no requirement for the applicant to provide a future road or footpath but to retain sufficient lands for its future provision.
- The planning authority was satisfied the applicant had sufficient legal interest

Other Technical Reports

EHO: No objections

Transportation : No objections

Fire Service: No objection

Environment Section : No objections

Housing : 6No. Units within the apartments for Part V

Water Services: No objection

Irish Water: No objections

3.3. Prescribed Bodies

The application was not referred. However it was referred to the statutory bodies by the Board and there were no issues raised by them on appeal.

3.4. Third Party Observations

Glengolden Builders Limited made a third-party submission stating:

- The applicant has no legal interest in the site to make the planning application.
- Unauthorised hoarding sign along Church Street
- Unauthorised developments on site

4.0 Planning History

15/463

Permission granted for the provision of 64No. dwellings, comprising of 46No. dwelling houses and 18No. apartments and 135No. car parking spaces.

13/641

Permission granted to Paul Mc Cann (Statutory receiver) for the demolition of the former Zed Candy Premises including the main factory building

08/146 and 14/371

Permission granted to Glengolden Builders Limited for a 7.3m access road, and widening of the existing entrance onto Church Street. The permission was extended under 14/371 to 14/08/2017.

5.0 Policy Context

5.1. Development Plan

Kilcock Local Area Plan 2015-2021

The site is located on land zoned as A – Town Centre and Strategic Redevelopment and Regeneration Area – the former Zed Candy Site

A. Zed Candy

The former Zed Candy factory (now demolished) site is located at the edge of the town centre along Church Street. The site is bounded to the north by Church Street and a petrol station, to the south by the Royal Canal and to the east and west by residential development.

Fig 27 provides an indicative layout of how the following principles can be implemented.

1. To develop a new urban neighbourhood based on sustainable densities and with a strong sense of place.
2. To facilitate the provision of a socially cohesive community through the provision of a wide range of housing types and tenures in an integrated manner.
3. To create a high quality physical environment through the development of a coherent spatial structure comprising the following elements:

Perimeter block structure.

Central spine road linking Church

Street with the Royal Canal in the form of a neighbourhood street as outlined in Chapter 15 Urban Design, Kildare County Development Plan 2011-2017 and in accordance with the principles contained in the Design Manual for Urban Roads and Streets (2014).

Pedestrian and cyclist bridge over the Royal Canal linking Church Street with the recreational open space on the 'Island'.

A centrally located area of open space providing an area for play suitable for small children.

□ Building frontage facing the Royal Canal providing passive supervision.

4. To open up the Royal Canal as part of this spatial structure and provide linkages over the canal to the 'Island' creating a network of linked public green spaces.

5. To promote the heritage, tourism and recreational opportunities of the Royal Canal by the creation of a linear park with linked pedestrian and cyclist routes.

6. To promote the amenity potential of the Royal Canal will be promoted as a key feature for this site and for Kilcock.

5.2 Sustainable Urban Housing : design Standards for New Apartments – Guidelines for Planning Authorities 2018

5.3 Natural Heritage Designations

There are no designated sites or areas adjoining the subject site. The closest Natura 2000 site is the Rye Water Valley/ Carton SAC which is located 6.3km to the east of the subject site.

The Royal Canal pNHA is located to the south of the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

The foul sewer, surface water and water main drawings submitted under 18/539 were examined. There has been no provision made from 'service' connections to the adjoining lands hatched yellow on the proposed site layout plan – Drawing No. 682-02-00 received by the planning authority on the 25/04/2016.

The site and file registration number 15/463 have been inspected by the appellants and it is noted Condition No. 8 has been complied with prior to the commencement of the development.

On file 18/539 it states, 'The applicant has sufficient legal interest to make a planning application: the attached information confirms the legal interest.' There are no documents on file to confirm this statement.

Summary of Key Planning Issues

- In the Planner's report, Glengolden Builders Limited submission on the planning file of 18/539, was not taken into consideration in the determination of the planning application.
- The 'legal interest' of the applicant is not on the planning file, and one cannot determine the legal interest of the applicant to the site.
- No provision has been made for adequate 'service connections' to service the adjoining lands hatched in yellow on the proposed site layout plan, Drawing No. 682-02-00 received by the planning authority on the 25/04/2016
- Condition No. 12 of planning register 15/463 cannot be complied with
- Unauthorised works are continuing on site as many of the conditions of 15/463 cannot be complied with, as they were supposed to be complied with prior to commencement of the development.

The proposed development is piecemeal, and haphazard and should be refused.

7.0 Assessment

7.1 This planning application is for minor alterations to a permitted residential scheme which is currently under construction in Kilcock, Co. Kildare. The residential scheme was permitted on a brownfield site in 2016 under the parent permission, planning registration number, 15/463, to the same applicant as the current application – *Paul McCann – Statutory Receiver of Waterside Kilcock Property Ltd* for the following development:

The provision of 64 No. new dwelling units, comprising 46 No. dwelling houses and 18 No. apartment units with associated 135 No. car parking spaces on 2.12Ha.

The same applicant, Paul Mc Cann (Statutory Receiver), had previously obtained planning permission in 2013 for the demolition of the former Zed Candy factory on the site and associated outbuildings.

From my recent site inspection, Phase 1 of 15/463 is complete, Phase 2 is under construction, and Phase 3 is about to commence.

The current application relates to a number of minor alterations to the permitted scheme:

- Changes to the external finish of the apartment blocks from reconstituted sandstone and zinc cladding, to a buff coloured brick and a powdered coated metal cladding. The applicants considered the brick finish will require less maintenance, as the reconstituted sandstone is more porous and has a tendency to stain;
- Changes to the southern part of Apartment Block 2 to accommodate a revised site boundary line which had incorrectly drawn on the parent permission due to mis reading the Folio Maps. The change results in an increase in floor area from the permitted 94.8sq.m. to 99sq.m. within 3No. of the apartments of Block 2. There are no other changes in apartment numbers, layouts, types, bedrooms or carparking spaces. It should be noted the applicant did revise the permitted roof design of Block 2 which was deemed not acceptable by the planning authority. The further information received on 30th of July 2018, reinstated a original roof design of Apartment Block 2 creating a more balanced symmetry alongside the Royal Canal.
- To change to the permitted finish on the front elevation of the dwellings so that the front porches consist of painted render and not reconstituted sandstone for the same reason as it has been revised on the proposed apartment blocks.
- A minor setback of the front entrance porches of House Type 3 to be consistent with the projected facades of the dwellings;
- The permitted window finish throughout the scheme to be changed form Alu-clad to uPVC colour grey;
- Minor changes to the ground floor layout of House types 1, 2A, 4, and 5 to improve the kitchen dining layout with consequent minor changes to the rear elevations of each of the dwellings; These dwellings will be provided with a garden sheds to the rear to provide for additional storage requirements.

- Corrections to previous minor anomalies on permitted drawings relating dwellings, and additional storage space provided within apartments;
- Minor revisions to road levels and floor levels of houses and apartments to accommodate drainage gradients.

7.2 As part of the further information on the current application, a copy of the Deed of Appointment of the Statutory Receiver for the National Asset Management Agency was submitted to the planning authority on 30th of July 2018 to demonstrate the legal interest of the applicant in the site. I am satisfied that applicant demonstrated sufficient legal interest to make the planning application. Indeed, this is consistent with the view on the previous applications on the site, registration numbers 13/641 and 15/463, as the same applicant applied for the previous relevant permissions on the subject site. The third-party appeal states the applicant has not demonstrated sufficient legal interest. In my opinion, based on the evidence on the planning file and the planning history of the site, this statement is wholly incorrect, and should be dismissed by the Board as grounds of appeal.

7.3 **Condition No. 12** of planning register **15/463**, which is relevant to this appeal as it is cited in the ground of the appeal states:

'The development shall be carried out and completed to ensure a future road, footpath and services connection will be available with lands hatched yellow on the 'Proposed site Layout Plan (Drawing No. 682-02-00) received by the Planning authority on 25/04/2016.'

According to Drawing No. 682-02-00 the lands hatched yellow include the laneway north of the filling station currently providing access to the northern portion of the site are "Extent of Easement with adjoining owner to the north". In addition according to the same drawing it states "Site within red line. Subject to easement with adjacent ownership excluded from the application. Highlighted area subject to granted planning permission Reg. Ref 08/146". Planning Registration Number, 08/146 was a grant of permission to the appellant, Glengolden Builder Limited for a

7.3metre access road and widening of existing entrance onto Church street. The appropriate period of the permission was extended under reference 14/371, to 14th of August 2017.

I note from the layout drawing that the subject access road does not form part of the overall residential scheme. There is a designated turning area at the end of the lane within the subject site to provide access to the onsite ESB substation. It would appear a strip of grass will be provided between the subject development and the subject access road. The drawing states, '*The construction of A Entrance Gate to Allow for Future Connection*'. The said road is clearly excluded from the overall completed scheme. The subject road does not form part of the current application and is not relevant to the revisions outlined in the current application.

7.4 The third-party appellant is concerned about non-compliance of conditions relating to the parent planning permission, 15/463. Compliance of conditions and enforcement matters are beyond the remit of the Board, and a matter for Kildare County Council. The planning authority stated in the assessment of the issue relating to Condition No. 12, that there is no requirement by the applicant under the terms of the condition to provide the future road or footpath or service connections, but to retain lands for its future provision of a road/ footpath/ service connections to facilitate adjoining lands. The planning authority are satisfied the terms of condition No. 12 has been complied with by the applicant. I advise the Board to dismiss this issue of the appeal.

7.5 Appropriate Assessment

The Royal Canal pNHA is adjacent to the subject site. There is no Natura 2000 site within or adjoining the subject site. The closest site is the Rye Water Valley/ Carton SAX which is 6.3km east of the subject site. Given the scale, urban location and brownfield nature of the subject site, and the distance from any Natura 2000 site, it is not considered that the proposed development will result in significant adverse impacts on any designated site

8.0 Recommendation

- 8.1. I recommend the planning authority's decision to grant permission for the proposed development be upheld.

9.0 Reasons and Considerations

Having regard to the location and zoning of the site, the provisions of the Kilcock Local Area Plan 2015-2021 and to the previously permitted development on this site granted under planning registration number, 15/463, it is considered that subject to compliance with the conditions attached, the proposed amendments would not seriously injure the visual amenities or the character of the area, and would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance the plans and particulars lodged with the planning application, as amended by the further plans and particulars submitted on the 30th day of July 2018, except as may be otherwise required in order to comply with the following conditions.

Reason: In the interests of clarity.

2. Apart from the revisions authorised by this permission, the development shall be carried out in full accordance with the terms and conditions of the parent permission, planning registration number 15/463. The expiry date of both permission is the 4th of July 2021.

Reason: In the interests of clarity.

3. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the

area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Caryn Coogan
Planning Inspector

22/01/2019