



An  
Bord  
Pleanála

## Inspector's Report ABP 302787-18.

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### Development

New electronic metal security gates and electronic pedestrian security gate at entrance from public road, new raised concrete road surface, raised footpaths and metal railings at side boundaries, surface water drainage connection, signage and site works.

### Location

Harbour Village, Killaloe, Co. Clare.

### Planning Authority

Clare County Council.

### P. A. Reg. Ref.

P18-620.

### Applicant

Harbour Village Management

### Type of Application

Permission

### Decision

Refuse Permission

### Type of Appeal

First Party x Refusal

### Appellant

Harbour Village Management

### Date of Site Inspection

6<sup>th</sup> December, 2018.

### Inspector

Jane Dennehy



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## **1.0 Site Location and Description**

- 1.1. The site which is located on the north east side of the R463 at the northern end of Killaloe has a stated area of 2,500 square metres and is that of the Harbour Village development comprising sixty apartments in two, three storey blocks overlooking a marina, landscaped communal open space and surface carparking.

## **2.0 Proposed Development**

- 2.1. The application lodged with the planning authority indicates proposals for the installation of a set of electronic metal security gates for vehicular access and an electronic pedestrian security gate at entrance from public road along with a new raised concrete road surface, raised footpaths and metal railings at side boundaries. Also included are proposals for a new surface water drainage connection and signage at the entrance and associated site development works.
- 2.2. In the submission accompanying the application it is stated that the security gates are necessary: (a) to provide for a drainage channel at the side of the R463 to collect surface water and channel it for release it to the marina in order to overcome problems with flooding of the residential development from run off during storm events from the public road and, (b) to prevent members of the public from driving into the development, dogs being allowed to run loose, drug dealing, unauthorised mooring of boats and burglaries.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated, 24<sup>th</sup> September, 2018, the planning authority decided to refuse permission for the proposed development based on three reasons.

According to reason 1 the proposed development would impede the permeability and integration the apartments and marina with the neighbourhood and that the gates' height and scale would seriously injure the visual amenities of the area and would set undesirable precedent for similar development.

According to Reason 2 the planning authority is not satisfied that the setback from the roadway is sufficient to ensure that traffic movements on the R 467 is not impeded, leading to endangerment of public safety by reason of traffic hazard due to proximity to the road edge, time delays for operation of the gates and the vehicular and pedestrian movements to and from the site.

According to reason 3 the planning authority is not satisfied that the applicant has sufficient legal interest of the necessary consents to implement the proposed development.

### 3.2. **Planning Authority Reports**

- 3.2.1. The **planning officer** in his report indicated that he did not consider that the proposed development could be justified based on the security concerns and the surface water drainage proposals incorporated in the proposal to prevent flooding and associated damage within the development site.

The planning officer also noted the concerns of the roads design office with regard to the proposed setback and potential obstruction of traffic flow and endangerment of public safety on the R463 and, Mr Symington's submission in which he contests the ownership and entitlement of the applicant to implement the development if permitted.

- 3.2.2. **The report of the Roads Design Office** dated, 14<sup>th</sup> September, 2018 indicate recommendations for capacity to accommodate the largest vehicular type in the access which is to have sufficient setback, possibly greater than fourteen metres proposed allowing for unimpeded opening, away from the road and for clearance of the main running lane and preferably also the footway cycle facility. Reference is made to the standards in TH DN GEO-03060.

It is also recommended that the footpath and concrete road areas should be in accordance with the standards set out in *Design Manual for Urban Roads and Streets*, (2012) (DMURS.) The slope should be 1 in 20 if possible and at a maximum height of 75 mm.

### 3.3. **Third Party Observations**

A submission was lodged by on behalf of Ian Symington of Block D Harbour Village who is stated to be the registered owner of the site. According to the submission, the proposed development is premature development at Harbour Village and the adjoining lands being incomplete and at issue are improvements, especially with regard to sightlines at the entrance which have arisen in relation to prior applications and which have not been resolved. It is Mr Symington's intention, pending availability of sewage facilities, to submit an application for completion of the development and entrance at a future date.

The applicant does not have the consent of Mr. Symington to lodge the application. The applicant is not in ownership of the site as the completed communal areas have not yet been transferred to the Management company

### 4.0 **Planning History**

P. A. Reg. Ref. 07/1069: Permission was granted to Mr. Symington for a three storey plus mezzanine building containing twelve dwelling units and commercial facilities to include spa, creche, café, offices, associated ancillary facilities and site works.

P. A. Reg. Ref. 08/1213: Permission was refused to Mr Symington for development relating to reorganisation and expansion of the marina inclusive of provision for additional berths.

P. A. Reg. Ref. 08/1214: Permission was refused to Mr Symington for a three storey plus mezzanine building containing fifteen dwelling units and reorganisation of the surface carparking facilities.

P. A. Reg. Ref. 09/109. P. A. Reg. Ref. 07/1069: Permission was granted to Mr. Symington for retention of nine berths at the marina.

## 5.0 Policy Context

### 5.1. Development Plan

The operative development plan is the Clare County Development Plan, 2017-2023. (CDP) The site is subject to the zoning objective: "Existing residential" the purpose of which is preservation and enhancement of the character of the area, protection of residential amenities.

Section 17.1 and Section 7.4.2 provides for requirements on private and public developments to contribute positively to the public realm and for the achievement of high quality places with sense of place, an attractive and well-maintained appearance and promotion of social integration.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. An appeal was received from Adam Kearney on behalf of the applicant on 17<sup>th</sup> October, 2018. Attached is a drawing indicating proposed revisions to the design for the security gates.
- 6.1.2. It is stated that the purpose for the purpose development is to prevent surface water ingress during flooding events from the public road to the development and to provide the development with additional security especially in hours of darkness as there have been several burglaries from the marina in recent years.
- 6.1.3. With regard to reason No 1 for the decision to refuse permission, it is submitted that:
- Installation of the gates would reduce insurance premiums and correspondingly, the management charges for residents. The applicant is willing to accept a condition with a requirement for the gate to remain open during daylight hours.
  - A revised design is proposed which provides for narrower gates and smaller scale piers than shown in the original proposal which, with the setback, it is

stated, alleviates concerns as to visual obtrusiveness. Gates are permeable, and the front boundary is low in height.

- The planning officer assessment, with references to the provisions of section 17.4.2 of the CDP is misleading in that it is not the intention of the applicant to prohibit access to the site. An additional information request should have been issued to allow for clarification and to address the concerns of the planning authority.
- Precedent can be taken from a prior case whereby the planning authority decision to refuse permission for similar development at Malahide was overturned following appeal. (PL 240900 refers.) A condition was attached to provide for daytime permeability. (An image of the development permitted is included.

6.1.4. With regard to reason No 2 for the decision to refuse permission, it is submitted that:

- The roads section is not opposed to the proposed development, but it is acknowledged that the separation distance for the setback from the road edge was a concern. In the proposed revisions to the design shown on the drawing included with the appeal, the setback is increased to twenty-one metres. It removes inward and outward segregation allowing for a single carriageway width of six metres for the sliding gate. The gate to the eastern side will not function as a pedestrian gate and will be fixed
- The gate is to be open during daylight hours and is to be operated by a remote fob controller and keypad terminal near the gate. An automated sensor (dawn to dusk) similar to those used for lamp standards will operate the opening motor mechanism.

6.1.5. With regard to reason No 3 for the decision to refuse permission, it is submitted that:

- The applicant is an owners' management company responsible for the common areas as per the Multi Unit Development Act, 2011 and copies of detailed legal documentation are provided with the appeal. The applicant is also fully aware of the provisions of section 34 (13) of the Planning and Development Act, 2000 as amended. (The Act.)



## 6.2. Planning Authority Response

A submission was received on 13<sup>th</sup> November, 2018 in which it is requested that the decision to refuse permission be upheld. According to the submission:

- The thrust of the proposed development was not misconstrued in the assessment. The proposed development would prohibit access or control over the access to the site.
- While the surface water management proposals are noted, they are not dependent on the proposed development and creation of a gated community. There are alternative, less visually obtrusive, and more appropriate means to provide for security.
- The proposed development is visually obtrusive, out of character with and negative in impact on the public realm.
- The provisions of section 34 (13) of the Act regarding legal interest and entitlement to carry out a permitted development are noted.

## 7.0 Assessment

7.1. The issues raised in the appeal and considered below, followed by Environmental Impact assessment Screening and Appropriate Assessment are:

Public access visual and recreational amenity,

Flooding Risk

Anti Social Behaviour

Entitlement to Implement the Development.

7.2. **Public access visual and recreational amenity,**

The site location is dissimilar to urban residential development due to the location adjacent to Lough Derg and the Marina, which it is noted, is not in public ownership. However, obstruction of, visual connectivity and public access to Lough Derg is contrary to the intent and policy objectives of the Clare County Development Plan, 2015-2021 as provided for in sections 17.1 and 17.4.2 in particular. The erection of

security gates in effect segregates and fences off Harbour Village and the Marina from the village community and wider public access. In the case of the original proposal included in the application, the width at 11.6 metres and height at 1.6 metres for the gates and in excess of two metres for the supporting poles and somewhat utilitarian industrial design characteristics for the gates and piers results in visual dominance and detract from the characteristics, features and amenities of the public realm within the established surrounding environmental context.

- 7.2.1. The impact of the modified design proposals included in the appeal would result in less adverse impact but by the introduction of a security gate system giving effect to a perception of a gated community the segregation and detract from amenity potential for the community and the public realm in general would not be overcome. Even if the gate is open in daylight hours the presence of the gate structure itself discourages the community and members of the wider public from coming into the site. As it is, the layout of the residential element and distribution of surface carparking within the site is such that it is not immediately apparent that the area is open to the public.

### 7.3. **Flooding Risk.**

- 7.3.1. It is fully appreciated that the applicant intends, through the application to prevent flooding of the site and the dwellings within it from runoff from the public road during storm events. It is unquestionable that the development would benefit from such measures. However, while the proposed drainage channel and raised surfaces will deliver on flooding management within the site, the proposed security gates and support structures would be immaterial to the proposed arrangements for surface water drainage included in the application. These arrangements are not dependent on the proposed security gates to deliver flooding management.

### 7.4. **Anti-social Behaviour.**

- 7.4.1. The concerns of the applicant about anti-social behaviour and burglaries and unauthorised mooring in the Marina are acknowledged and appreciated but it is agreed with the planning officer that there are alternative effective means of management and prevention of such occurrences that can be considered. To allow for the erection of the security gates, either as originally proposed or as modified in the proposals included with the appeal which would be directly in conflict with the policy

objectives of the CDP provided for in sections 17.1 and. 17.4.2. Furthermore, it is considered that there is no justification for flexibility in the application of these policy objectives in that erection of security gates and creation of gated communities are not the sole means by which effective management of a development can be achieved.

#### **7.5. Entitlement to Implement the Development.**

7.5.1. The statement made on behalf of Mr Symington who developed the Marina and residential development that the public areas have not been transferred to the Management Company to date because of which the legal entitlements of the applicant are challenged, and Mr Symington's intends to complete the overall development in the near future is appreciated. As previously referenced at application stage, section 34 (13) of the Act confirms that a grant of planning permission does not provide an applicant with entitlement to implement the development.

#### **7.6. Environmental Impact Assessment Screening.**

Having regard to the minor nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### **7.7. Appropriate Assessment.**

7.7.1. The closest European site is the Lower River Shannon River SAC (002165) which is circa 850 metres from the site location. Having regard to the minor scale and nature of the proposed development which is within a housing scheme at a serviced location within the village of Killaloe no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. In view of the foregoing it is recommended that the planning authority decision to grant permission be upheld although it is considered that the concerns as to obstruction and traffic hazard o the R 463 are substantively overcome in the option for a revised design and layout included in the appeal. Draft reasons and considerations follow.
- 8.2. Should it is decided to grant permission inclusion of a note with the Order to draw the attention of the applicant to the provisions of section 34 (13) of the Act would be advisable.

## 9.0 Reasons and Considerations

It is considered that the proposed installation of electronic security gates would create a barrier effect that would impede the potential integration of the residential and marina development into the neighbourhood and community, from positively contributing to the public realm, from achievement of a high quality place with sense of place provided for in Section 17.1 and Section 7.4.2 Clare County Development Plan, 2017-2023, and would, set an undesirable precedent for further, similar gated developments in Killaloe. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

**Jane Dennehy**  
Senior Planning Inspector  
17<sup>th</sup> December, 2018.