



An
Bord
Pleanála

Inspector's Report ABP 302823-18

Development	Two semi-detached dwellings and associated site development works.
Location	Ard na Deirge, Knockyclovaun, Killalloe, Co. Clare.
Planning Authority	Clare County Council.
P. A. Reg. Ref.	P18-621
Applicant	ODM Properties.
Type of Application	Permission
Decision	Refuse Permission.
Type of Appeal	First Party x Refusal
Appellant	ODM Properties.
Observer	
Date of Site Inspection	6 th December, 2018.
Inspector	Jane Dennehy,

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1.0 Site Location and Description

- 1.1. The site of the proposed development has a stated area of 705 square metres and is located on vacant space between two houses within the Ard na Deirge residential estate which is within the settlement boundary, towards the north-western edge of Killalloe. Timber fencing is located along the frontage and enclosed by two metres high block walls along the side and rear boundaries.
- 1.2. The residential estate is part of a former “unfinished housing estate” which was completed by Rathbrae Developments further to calling in of the Bond, in agreement with the local authority. The agreement included provision for revisions to the internal roads layout which facilitated the construction of the additional eight houses to the east of the site location.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for construction of a semi-detached pair of houses, the total stated floor area of which is 242 square metres on the site along with four off street parking spaces off one shared driveway. A small space at the southern end of the site is to be soiled and seeded and integrated into an adjacent area designated as public open space within Ard na Deirge. The footprint of the dwellings is slightly staggered and forward of the existing dwelling to the south east and behind the existing dwelling to the north west side of the site.

3.0 Planning History

P A. Reg. Ref 11/36 (PL 239393): Further to a third-party appeal, the planning authority decision to Grant Permission for two houses and permission for retention and completion of twenty-five houses along with roads, lighting, boundary treatment and site works was upheld.

Condition No 1 is the standard compliance condition

Condition No 4 (1) (d) is reproduced below:

No further works shall be carried out on Plot Nos 12-19 (inclusive) and No 24 until the following works have been completed to the satisfaction of the planning authority:

(iv) Public open space areas adjacent to Dwelling 1-5 (inclusive) No 11 and opposite Nos 20—23 (inclusive).

Condition No 10 is reproduced below:

“The area of public open space shown on the lodged plans shall be reserved for such and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority.....”

3.1.1. Permission was subsequently refused for two dwellings for similar reasons to the decision to refuse permission for the current proposal: namely, material contravention of the prior grant of permission and (2) Failure to demonstrate satisfactory access arrangements under P. A. Reg. Ref14/7171 and in 2018, for similar reasoning for a further application for two houses under. P. A. Reg.Ref.17/993:

Under P. A. Reg. Ref: 06/449: Approval was granted for two houses on the application site subject to conditions. This application was lodged and determined prior to the application for which permission was granted under P. A. Reg. Ref. 11/36 and it formed part of the previously permitted development of eighty-seven houses under P. A. Reg. Ref.04/1859. (Outline permission had been granted under P. A. Reg. Ref. 01/278. The grant of permission under P. A. Reg. Ref: 06/449 was not taken up.

3.1.2. According to the planning officer's report three concurrent undetermined applications were also lodged with the planning authority under P. A. Reg. Refs 18/580, for three dwellings and 18/581 and, 18/582, each of which is for two dwellings.

3.1.3. There is an extensive planning history relating to development on adjoining lands and lands in the vicinity details of which are set out in the planning officer report.

4.0 Planning Authority Decision

4.1. Decision.

By order dated, 24th September, 2018, the planning authority decided to refuse permission on the basis of two reasons.

According to Reason No 1 the proposed development materially contravenes Condition Nos 1, 4 (d) and 10 attached to the grant of permission under P. A. Reg. Ref. 11/36, (which was subject to appeal under PL 393393) in that the site area was designated as public open space within the permitted development. It is indicated in the reasoning that the quality and quantity of public open space would be reduced and that this would be prejudicial to the amenities of occupants of existing dwellings.

According to Reason No 2 it has not been demonstrated that the proposed access arrangements are satisfactory. As a result, the proposed development is haphazard, piecemeal and sub-standard in attainable residential amenities or the future occupant and seriously injurious to the amenities of the area.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The planning officer who in his report reviews the development of the residential estate dating back to the original grant of outline permission under P. A. Reg. Ref. 01/278 notes that on the masterplan submitted with the application under P. A. Reg. Ref. 11/36 the application site lands are not identified as being for “possible future development”. However, it was verified that the permitted development relates to the original layout shown in the application rather than the further information submission.

4.2.2. The planning officer also notes Condition 2 (i) of the grant of permission in which it is stated that the grant of permission does not include consent to the layout shown on the masterplan for the residual lands. (Drawing 3030/03 P2) The planning officer

points out that in the original layout, (which was authorised by the grant of permission) the site area is designated as 'open space'. He concludes that there is no change in circumstances that allow for a different outcome to the refusal of permission for the prior applications under P. A. Reg. Ref. 14/717 and P. A. Reg. Ref. 17/993.

4.2.3. It is stated that the proposed access for the houses is shown routed through the open space to the front of the site, (not included within the site are outlined in red) and that applicant may not have consent of the land owner.

4.2.4. The planning officer also considers the layout which provides for stepped front building lines inappropriate to the existing pattern and layout and that it would adversely affect visual amenity but that the matter could be resolved through a further information request.

4.3. Third Party Observations

4.3.1. Observations received from residents indicate objection on grounds of prior designation of the site area as public open space, adverse impact on residential amenities of private open space and overlooking of internal accommodation in dwellings on the adjoining properties, construction stage disturbance, inconvenience and public safety concerns, dwelling footprint, design and visual impact and Title.

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. Infill development is allowable if it is appropriate and consistent with the pattern and character of the immediate environs and existing residential communities.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was received from HRA Planning on behalf of the applicant on 22nd October, 2018. It is submitted that the planning authority failed to consider the proposed development in the context of the circumstances of the development of the residential estate.

6.1.2. According to the appeal:

- It was always the intention to develop the site. The delayed construction and completion of the estate has been the impediment that with regard to the prior to unsuccessful application under P. A. Reg. Ref. 14/717, the circumstances to the current application and the former application under P. A. Reg. Ref. 17/993 are materially different and the current proposal complies with relevant spatial development objectives.
- The proposed layout and design is responsive to the pairs of dwellings on either side with an offset orientation which also addresses concerns about the separation distances, overlooking potential and residential amenities of adjoining properties.

6.1.3. With regard to Reason 1 for the decision to refuse permission:

- The grant of permission under P A. Ref. Ref. 11/36 is for the development of the estate. (Construction of two houses and retention of twenty-five houses.) The proposed development does not materially contravene Condition Nos 1, 4 (1) (d) and 10 of the grant of permission under P A. Ref. Ref. 11/36. The Applicant did not have consent to include the site as designated public open space and the designation was removed during the application process in that the space was reassigned as 'brownfield' and 'possible future development' on Drawing 3030/03 P2. This removed functional purpose for the current application site is part of the permitted development under P A. Reg. Ref. 11/36. Residual concerns with regard to Condition No 2A for the site layout (master plan) for residual lands as shown on Drawing 3030/03 P2 should be interpreted in the way it is stated and intended. The grant of permission under

P A. Ref. Ref. 11/36 does not give effect to permission for dwelling Nos 40-87 in the residual portion of the site. The purpose of Condition No 2 is reasonable in the context of the revised masterplan which illustrates a larger residential estate than that which was included in the application drawings or the public notice descriptions. To suggest that the grant of permission requires the current application site is to function as public open space is unfounded and unreasonable.

- The current proposal does not affect the provision and use of the open space in the development although in the current application there is as negligible encroachment on the north west corner of the public open space to facilitate vehicular access which has been minimised but it does not preclude and does maintain the integrity of the public open space provision for Ard Na Dierge. There is consensus to the modifications to the original permitted layout which facilitated the completion of the estate, at the applicant's expense. The proposed development therefore does not materially contravene Condition No 1 of the grant of permission under P. A. Reg. Ref. 11/36.
- The estate permitted under P. A. Reg. Ref. 11/36 is completed to the satisfaction of the planning authority so the claim as to material contravention of Condition No 4 (1) (d) is questionable in the circumstances and having regard to agreements between Rathbrae and the planning authority. The condition does not preclude favourable consideration of the current proposal at this time or that other works should be complete in advance.
- There is no question of material contravention of Condition No 10 of the grant of permission under P. A. Reg. Ref.11/36 because the public open space has already been modified and the current proposal does not adversely compromise the layout and use of the permitted development and public open space.
- The modifications to the roads made to the estate by the previous developer, dissected the open space in front of dwelling Nos 11 and 12 and this was fixed and accepted by the local authority. The applicant works with this agreed layout in the current application and proposes replacement for the space

encroached on by the driveway (16 square metres in area) by space from the site, (which is 49 square metres in area) which is to be landscaped and is an extension to the existing open space. The applicant is willing to cede this space to the local authority. The net additional space of 33.5 square metres would increase the total public space from 165 to 198.5 square metres and this space is not marginal or peripheral. (Figures 1.4 in appendix 1 to the appeal refers.) The quality and quantity of public amenity open space is therefore improved if the development is permitted.

6.1.4. With regard to Reason 2 for the decision to refuse permission:

The proposed development is neither haphazard or piecemeal and is in keeping with the previously recognised development potential of the site. An effective layout and orientation consistent with the fixed and agreed layout of the estate which respects the previous grant of permission is proposed which will not adversely affect the residential amenities of existing residents and the future occupants.

6.1.5. Since 2006, when permission was granted for two houses on the site, it has been the intention to realise the development potential of the site.

6.2. Planning Authority Response

6.2.1. A submission was received from the planning authority on 15th November, 2018 according to which:

- The proposed development materially contravenes the parent grant of permission under P. A. Reg. Ref 11/36:
- There is no material change in the current application relative to the two previous applications for similar development for which permission was refused. (P. A. Reg. Ref. 14/717 and P. A. Reg. Ref. 17/933 refer.)
- The subject site is clearly designated as “green space” not “future development”.
- The quality and quantity of open space serving the estate would be reduced if the proposed development is permitted.
- It is not demonstrated that the site can be accessed from the existing road in the estate.

7.0 Assessment

7.1. The issues central to the determination of a decision are considered below under the following two subheadings:

Material Contravention of P.A. Reg. Ref. 11/36.

Layout and Qualitative and Quantitative issues.

7.2. Material Contravention of P.A. Reg. Ref. 11/36.

- 7.2.1. It has been verified that the permitted development under P.A. Reg. Ref. 11/36 relates to the original layout shown in the application and not to the further information submission lodged in connection with that application. For the purposes of the current application, the effective original application and parent permission is the grant of permission under P. A. Reg. Ref. 11/36. It is noted that there are prior grants of outline permission and approval under P. A. Reg. Refs. 01/278 and 04/1859 which are not of direct relevance and the designation subsequently as an Unfinished Housing Development is noted.
- 7.2.2. The site area in the original application is shown in the layout as open/green space. While a masterplan was submitted to the planning authority in the further information submission for the application under P. A. Reg. Ref. 11/36 it was disregarded. This is clearly confirmed by reason of the attachment of condition No 2 (i) to the grant of permission in which it is stated that the grant of permission does not include consent to the layout shown on the masterplan for the residual lands. (Drawing 3030/03 P2) Therefore the designation proposed in the masterplan was not accepted so it is not agreed that the site area is reassigned as 'brownfield' and 'possible future development' which would have facilitated consideration of a proposal for infill development. The reasoning for the decision of the planning authority for refusal of permission on grounds of material contravention of Condition Nos 1, 4 (i) and 10 are therefore considered reasonable.
- 7.2.3. The application is substantively similar in detail to the two prior unsuccessful applications lodged under P. A. Reg. Ref. 14/717 and P. A. Reg. Ref. 17/933 and with regard to consideration of the current proposal, it appears that there are no material changes in the planning context. The grant of permission for two houses under P. A. Reg. Refs 06/449 which was not taken up is also noted.

7.3. **Layout and Qualitative and Quantitative issues.**

- 7.3.1. In the current proposal it is argued that quantitatively and qualitatively, there is considerable gain regarding public open space provision by way of the area proposed for substitution for the area across which an access to the two proposed dwellings is to be provided. This claim is questionable in that the visual and amenity potential would be reduced if the proposed substitution is accepted. The area to be annexed identifies with the proposed house and the existing house to the south east side where it is setback towards the rear. The area across the vehicular access driveway is proposed is fully integrated with the public open space, forward of the front curtilages of the dwellings would be severed, identified as part of the private properties and would lack visual amenity or utility value as part of the public open space for the overall development. The argument as to quantitative benefit and advantage would be eradicated by the poor visual amenity and utility value.
- 7.3.2. Contrary to the assertion in the appeal, it is not agreed that the layout of the proposed development is complimentary to the completion of the estate or as infill. By necessity owing to the wedge shaped, site configuration with the narrow frontage and the attempt to insert a pair of dwellings, the footprint is setback almost to the rear building line of the adjoining house to the north west and circa twenty metres to the rear of the dwelling to the south east. As such there the development does not relate to the adjoining dwellings the layout or enclosure of the estate. Instead it is more identifiable and characteristic of back land development. The stepped footprint for the front building lines of the two dwellings is of character with the established design intent for the layout character of the scheme whereby there is common front building line for each group of houses around the public open space.
- 7.3.3. It is considered that the layout and positioning of the dwellings relative to the existing permitted development is such that the proposed development gives rise to overlooking and perceptions of overlooking towards the rear and the rear private open space of the adjoining properties.
- 7.3.4. Separately, the private open space provision is deficient for the proposed house type at 6.7 and 7.6 metres in depth to the rear boundary from the rear building line and limited in area. It is considered that space to the side and to the front is not comparable in amenity potential for the purposes of inclusion in a calculation of rear

private open space provision. The quantitative allocation and configuration represents a considerable departure for the rear private open space provision relative to that of the existing dwellings and the density and layout of the scheme.

- 7.3.5. There is no objection to the proposed house type. The proposed development is for the insertion of two in the house type which is homogenous throughout the existing development and which is high quality in design detail and materials and finishes.

7.4. 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.

7.5. Appropriate Assessment.

- 7.5.1. 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. It is recommended that the planning authority decision to refuse permission be upheld. Draft reasons and considerations follow.

9.0 Reasons and Considerations

- 9.1. The proposed development would materially contravene Condition Nos 1, 4 (1) (d) and 10 attached to the grant of permission under P. A. Reg. Ref. 11/36 according to which the site is designated as public open space. Furthermore, the proposed development would result in an unacceptable diminution in the quality of public open space provision by way of severance of the existing public open space and peripheral location of the additional space to be substituted. The proposed

development is therefore contrary to the proper planning and sustainable development of the area.

- 9.2. The proposed development would constitute substandard haphazard and piecemeal development by reason of the stepped footprint and setback behind the existing houses to each side, potential for overlooking to the rear of the adjoining properties and by reason of substandard private open space provision to the rear. As a result, the proposed development would seriously injure the residential amenities of properties in the vicinity and the potential residential amenities for future occupants. The proposed development is therefore contrary to the proper planning and sustainable development of the area.

Jane Dennehy
Senior Planning Inspector
18th December, 2018.