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Bord  
Pleanála

## Inspector's Report ABP-302941-18

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<b>Development</b>	Permission for retention of changes made to an existing three storey apartment building
<b>Location</b>	Middletown, Ardamine, Gorey, Co. Wexford
<b>Planning Authority</b>	Wexford County Council
<b>Planning Authority Reg. Ref.</b>	20180254
<b>Applicant(s)</b>	Thomas O' Loughlin
<b>Type of Application</b>	Permission for retention
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Eric Norton
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	25 <sup>th</sup> January 2019
<b>Inspector</b>	Emer Doyle

## 1.0 Site Location and Description

1.1. The site is located in the townland of Middletown, Ardamine, Co. Wexford. The site is located to the rear of a caravan park and is accessed from the caravan park. The site is bounded to the rear with a road which serves mainly chalets and holiday homes. Development to the south of the site consists of a dwelling with a large balcony and a chalet. Development on the site consists of a three storey apartment block with 9 No. apartments and a terrace of 5 No. two storey dwellings.

## 2.0 Proposed Development

2.1. Permission is sought for retention of changes made to an existing three storey apartment building including the following:

- Changes to balcony and façade structure to front elevation including a lift tower structure.
- Provision of a second floor level balcony on the rear elevation
- Change of finish material from nap plaster to timber cladding on part of the building
- Change to levels

2.2. Following a Further Information Request, revised notices were submitted in relation to a change in the site boundary. Details of a legal agreement regarding the access was also submitted together with a CCTV survey of existing surface water disposal pipes and levels. A revised drawing of the existing second floor was also submitted which provided for a smaller floor area than originally granted.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.2. Permission granted subject to 2 No. conditions. Condition No. 2 required that the works proposed as outlined in the detail and drawings submitted to the Planning Authority on the 1<sup>st</sup> of October 2018, to separate the surface water from the foul

sewer and to construct new storm line, gullies and drains connecting to a soakpit, shall be completed within 4 months of this decision.

### 3.3. Planning Authority Reports

#### 3.3.1. Planning Reports

- The first planner's report dated the 19<sup>th</sup> of April 2018 considered that the change in location of the building had resulted in a narrowing of the access to adjoining landowners. It also considered that the second floor balcony does not provide any additional overlooking to what is afforded by the ground and first floor balconies below on the same eastern elevation. Concerns were expressed in relation to surface water disposal on site. Further Information was requested in relation to a number of issues.
- The second planner's report dated the 22<sup>nd</sup> of October 2018 noted that the CCTV survey showed that the surface water sewer is connected to the foul sewer and that the applicant is now proposing to provide a separate storm pipework to a soakpit in the green area as outlined in the drawings submitted. The planner recommended refusal as the application is for retention and the planning authority can't consider proposed works as they have not been included in the application and public notices.
- A third report from the Senior Executive Planner dated the 25<sup>th</sup> of October 2018 noted the comments of the Director of Services (see below) and concurs with the Director of Services that this issue can be resolved through enforcement if non-compliance with the conditions remain an issue. Permission was recommended and it was recommended also that a follow up site inspection took place to ensure full compliance with the condition to separate surface water from the foul sewer.

#### 3.3.2. Other Technical Reports

- In response to the recommendation for refusal, there is a note on the file from the Director of Services as follows:

*‘This case has an obviously complex background. In general, I have no argument with the case officers approach. However, I have concerns that the application is being refused on the sole grounds that there is some intrusion of surface water into the sewer system. The issues have been identified by CCTV and a rectification has been proposed.*

*Can you advise why we could not resolve this issue by way of condition? It appears undesirable to refuse permission for an otherwise acceptable development on such narrow grounds.’*

### **3.4. Prescribed Bodies**

3.4.1. No reports.

### **3.5. Third Party Observations**

3.5.1. Submissions were received from the appellant, Eric Norton which generally reflect the main grounds of the appeal.

## **4.0 Planning History**

### **PA 20044960**

Permission granted for residential development consisting of apartment building incorporating 8 No. 2 bedroom apartments and 1 No. 3 bedroom apartment and basement parking facilities, 5 No. 3 bedroom townhouses and all associated site works.

### **Enforcement**

There have been a number of enforcement files on the site including 0070/2013 - a current active enforcement case resulting in the current application and appeal.

## 5.0 Policy Context

### 5.1. Wexford County Council Development Plan 2016-2022

- Section 18.10.4 Public Open Space
- Objective RS32: To avoid the loss of public and private recreational open space and facilities unless recreational facilities are provided in a suitable location.

### 5.2. Courtown Riverchapel LAP 2015-2021

- There are two zonings on the site as follows:

Zoning – ‘To provide for caravan and mobile home parks’  
and ‘Existing Residential’.

- Objective RS06: To avoid the loss of public and private recreational facilities unless alternative recreational facilities are provided in a suitable location.

### 5.3. Natural Heritage Designations

There are a number of Natura 2000 sites within 15km of the site including the following:

- Kilpatrick Sandhills SAC c. 11.4km to the north.
- Cahore Polders and Dunes SAC and Cahore Marches c. 8.3km to the south.
- Slaney River Valley SAC c. 11.7km to the west.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The overall site boundary differs from the original, this difference includes a large section of open space sold to the appellant by the original developer.
- The building on site has been constructed 1m north of the granted location which narrows the access to the car park and the appellant's right of way.
- The width of the second floor apartment layout as constructed differs from the granted permission and results in a much larger apartment.
- The height of the building is c. 370mm higher than granted and the floor level is 1.13m higher than granted.
- The increased height has an adverse impact on the appellant in terms of overlooking from the second floor southern boundary.

### 6.2. Planning Authority Response

- None.

### 6.3. Observations

- None.

## 7.0 Assessment

### 7.1. Background

- 7.1.1. It would appear from the planning reports and the director of services note on the file that there is a complex planning and enforcement history on the site. The main issues are as follows:

- Changes to site boundaries
- Impact on Residential Amenity
- Other Issues
- Appropriate Assessment
- EIA Screening

## 7.2. Changes to site boundaries

- 7.2.1. Retention permission is sought for a significant change to the site boundary. The current site boundary is indicated on the site layout plan submitted to the Planning Authority dated the 5<sup>th</sup> day of March 2018. The site layout granted in the original permission is indicated on the layout submitted with the Further Information Response dated the 1<sup>st</sup> day of October 2018.
- 7.2.2. I note that the applicant re-advertised the change to the site boundary but the drawing submitted at Further Information stage indicated the original site boundary as granted under PA 20044960. It is stated in the response to the Further Information Request that *'we have adjusted the site boundary to fully reflect the boundary as outlined under planning permission ref. no. 20044960, although it should be noted the grounds to the southeast are not in the ownership of our client.'*
- 7.2.3. The appellant states that he purchased a plot of the original open space from a previous owner and incorporated it into his garden. A wall is now built around this land and I noted on the site inspection that the lands are grassed with a large pond at the end. The appellant states in the appeal that *'the red boundary shown on the revised site layout plans are incorrect and actually includes a section of land in front of my property which is in my ownership.'*
- 7.2.4. It is clear from the response on behalf of the applicant that he does not own the land, nor is he claiming to own the land. The drawing submitted in the Further Information Response simply indicates the boundary as granted in the original planning permission.
- 7.2.5. As it stands, the applicant does not own the site that was originally granted planning permission and only owns a reduced site with less public open space. The question

of importance for the Board in this retention application is whether the reduced open space is acceptable or not. There are objectives in both the Wexford County Council Development Plan and the the Courtown and Riverchapel Local Area Plan which require that the loss of public and private open spaces are avoided unless alternative recreational facilities are provided in suitable locations. I note that the Board dealt with a case under PL 26.246879 for permission for revised boundaries for the Seamount residential development in Riverchapel and the erection of an additional dwelling on open space. The circumstances in this case were different in that the open space was of good quality and well located on the site and there had been a specific condition in the original permission which required that when the treatment plant which was located on this open space was decommissioned and removed, the space would be maintained as communal open space. The Board refused permission in this case for two reasons relating to contravention of Development Plan objectives and contravention of conditions in the original permission.

- 7.2.6. Whilst there is certainly a significant reduction in public open space as a result of the change to the site boundaries, having regard to the poor location of the land to the rear of the apartments between an entrance to a basement car park and a roadway, and to the rear of a house in private ownership (the appellant's dwelling) and the sloping nature of the lands, I am of the view that the public open space was badly supervised and of poor quality. I have examined the criteria for public open space as set out in Section 18.10.4 of the Wexford County Council Development Plan and consider that it does not meet the criteria set out in terms of quality. I note that the developer is not proposing any alternative private open space. The Planning Authority have not raised any issues in relation to the reduction in public open space or the change in site boundaries. The appellants concern would appear to relate to ownership however this is not a matter for the Board. As such, I consider that the retention of the current boundary as proposed under the current applicant would not seriously detract from the residential amenities of the existing occupants of the development.



### 7.3. Impact on Residential Amenity

- 7.3.1. I note the appellant has raised two main concerns regarding impact on his property - firstly narrowing of the access to his property as a result of the construction of the building c. 1m closer to the southern boundary and secondly overlooking of his property.
- 7.3.2. The building was constructed c. 1m north of the granted permission which together with the balcony supports and the unauthorised parking of vehicles in yellow boxes has restricted access for the appellant.
- 7.3.3. The response to the Further Information Request dated the 1<sup>st</sup> day of October 2018 included details of a court settlement reached on or about the 30<sup>th</sup> of January 2017.
- 7.3.4. As part of the agreement reached within the settlement, the appellant has direct access to the front of the western elevation of his site boundary. The previous access to the appellants site was on the southern boundary. I noted on the site inspection that a block wall has now been built at this location and there is a new gated entrance on the western boundary of the appellants site. The location of both the previous and existing access are indicated on the site layout dated the 1<sup>st</sup> day of October 2018.
- 7.3.5. As such, I am satisfied that the issue in relation to access has now been addressed by the revised access arrangements that are now in place.
- 7.3.6. In relation to the issue of overlooking, I note that the second floor apartment (apartment 09) was built with a floor area of 116m<sup>2</sup> as opposed to the area of 159m<sup>2</sup> as per the permission granted under planning permission ref. no. 20044960. Both the original and the as built plans provided for a large roof terrace. Whilst I note that substantial excavation was proposed for the building which hasn't taken place, I concur with the planning authority report that 'the second floor balcony does not introduce any additional overlooking to what is experienced by permitted balconies all be it at a higher level.'
- 7.3.7. As such, I consider that the retention of the building in its current location is acceptable and that it does not detract from the residential amenities of adjacent properties.

#### **7.4. Other Issues**

7.5. The response to the Further Information Request indicated that further works are proposed to separate storm and gullies and these works are outlined in the drawings submitted dated the 1<sup>st</sup> day of October 2018. The planning report recommended refusal on these grounds however the Director of Services considered that the matter could be conditioned. The Senior Executive Planner concurred with this and considered that the issue could be resolved through enforcement if non-compliance remained an issue. I consider that the details submitted by the applicant represent an acceptable solution. In the event that the Board is minded to grant permission I recommend that a condition is attached requiring the applicant to carry out and complete these works within 6 months of the grant of permission.

#### **7.6. Appropriate Assessment**

7.6.1. Having regard to the nature and scale of the proposed development, comprising the retention of an apartment building in an urban area, and the distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the retention of the existing development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### **7.7. EIA Screening**

7.7.1. Having regard to the nature of the development comprising the retention of an existing apartment building in an urban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### **8.0 Recommendation**

8.1. It is recommended that permission be granted subject to conditions for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

Having regard to planning history on the site and the pattern of development in the area, it is considered that the retention of the development, subject to compliance with conditions below, would not be out of character with the area or seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 1<sup>st</sup> day of October 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The works proposed as outlined in the details and drawings submitted to the Planning Authority dated the 1<sup>st</sup> day of October 2018 (items A-E), to separate the surface water from the foul sewer and to construct a new storm line shall be carried out and completed within 6 months of the date of this permission.

**Reason:** In the interest of public health and to ensure a proper standard of development.

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Emer Doyle

13<sup>th</sup> February 2019