



An
Bord
Pleanála

Inspector's Report

ABP-303932-19

Development	Modifications to previously-permitted development: to include minor amendments to the site layout and change of house-type.
Location	Friars Hill Estate, Harristown, Borris Road, Graiguenamanagh, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	18/832
Applicant(s)	Defigo Holdings 1 Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party
Appellant(s)	Defigo Holdings 1 Ltd.
Observer(s)	None
Date of Site Inspection	21 st June 2019
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.63ha, forms two blocks within an existing, partially-completed housing estate (53 houses). The final wearing case has not been added to estate roads – although landscaping is completed. One plot is stated to be 0.194ha and the other is stated to be 0.403ha. [I note that these two areas do not add up to the stated area of 0.63ha on the planning application form]. Access to the Friars Hill estate is off the R705 Regional Road to Borris. The site is within the 50kph speed restriction zone associated with the town of Graiguenamanagh. The two plots were cleared for building, but have since become overgrown.
- 1.2. The larger plot is elevated, and slopes gently downhill from east to west. A large retaining wall (surmounted by a concrete post & wire fence) has been constructed on the eastern boundary – where the plot abuts an access lane. To the south, the plot abuts an existing estate road – the boundary with which is a high retaining wall. To the west, the plot abuts an area of public open space associated with already constructed houses within the estate – the boundary with which is a temporary palisade fence (to prevent trespass on the site). To the north, the plot abuts the rear gardens of existing houses within the estate – the boundary with which is a 2.0m high wall which is capped and plastered.
- 1.3. The smaller plot slopes gently downhill from northeast to southwest. To the northeast, it abuts an estate access road – the boundary with which is partly formed by a 2.0m high wall which is capped and plastered, partly by concrete post & timber fencing and partly by temporary palisade fencing (to prevent trespass on the site). To the southeast, the plot abuts the curtilage of existing two-storey housing within the estate – the boundary with which is a 2.0m high wall which is capped and plastered. To the southwest, the plot abuts the rear gardens of older houses within the Fairview housing estate – the boundary with which is a 2.0m high wall which is capped and plastered. To the west, the plot abuts an area of undeveloped land – the boundary with which is a 2.0m high wall which is capped and plastered. To the north, the plot abuts the curtilage of existing two-storey housing within the estate – the boundary with which is a 2.0m high wall which is capped and plastered.

2.0 Proposed Development

2.1. Permission sought on 19th December 2018, for amendments to an existing grant of permission for 16 no. houses within an incomplete housing estate at Friars Hill. The principal items are as follows-

- Revised layout for 16 semi-detached houses.
- Revised house-types for the 16 houses – to include minor increase in floor areas and some minor changes to elevations.
- Provision of 36 no. car-parking spaces – 2 on-site spaces for each house and 4 visitor parking spaces.
- Reduction in height of existing retaining wall on southern side of the larger of the two plots.
- Public lighting.
- Provision of a surface-water infiltration system within the smaller plot – with outfall to the Fairview housing estate to the west.
- Connection to public sewers and watermain.

2.1.1. The application is accompanied by the following documentation of note-

- Letter of consent from owners of the site to the making of the application – dated 19th November 2018.
- Correspondence in relation to provision of Part V housing units for the overall estate at Friars Hill.
- Argument against inclusion of conditions 4 & 8 of permission ref. 16/348.

3.0 Planning Authority Decision

By Order dated 15th February 2019, Kilkenny County Council issued a Notification of decision to grant planning permission subject to 2 no. conditions, which can be summarised as follows-

1. a) Development shall be carried out in accordance with the plans and particulars submitted with the application on 19th December 2018.

1. b) This permission is conditional on all conditions being complied with and on site development works and all infrastructural services being provided in accordance with the parent Permission (Ref. in Planning Register: P.16/348) save for omission of condition **4a of P.16/348**. In all other respects the development shall comply with the terms and condition [sic] of P.16/348 in full.
2. Relates to payment of a development contribution of €44,062.50.

4.0 Planning History

Ref. P16/348: Permission granted by KCC to Defigo Holdings 1 Ltd, for provision of 16 no. two-storey houses, amendments to retaining wall, provision of an infiltration system; and retention permission for 5 no. underground LGP storage tanks within a public open space area, on 16th December 2016. This permission was granted subject to 22 no. conditions. The retention element speaks for itself. The other elements of the development have not been carried out to date.

Ref. P06/1514: Permission granted to GMB Construction Ltd, to increase overall density to 69 no. units.

Ref. P05/1164: Permission granted to Sean Egars, for reduction in density to 67 no. units.

Ref. P04/594: Permission granted to Sean Egars, for residential development of 73 no. houses.

5.0 Policy Context

5.1. Development Plan

The relevant document is the Kilkenny County Development Plan 2014-2020. Within the Graiguenamanagh Local Area Plan 2009-2020 (extended), the site is zoned 'Existing Residential' on Map 1: Land Use Zoning of the LAP.

5.2. Natural Heritage Designations

The site is neither within nor immediately abutting any natural heritage designation. The closest such is River Barrow and River Nore SAC (Site code 002162) – located some 175m to the southwest – the Douske River.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal from RW Nowlan & Associates, agent on behalf of Defigo Holdings 1 Ltd, received by An Bord Pleanála on 14th March 2019, can be summarised in bullet point format as follows-

- This appeal is against condition 1. b) only.
- This condition should be amended to state that conditions 4 & 8 of permission ref. 16/348 are omitted from this permission.
- Condition 4 relates to roads. Condition 8 relates to drainage – particularly surface water attenuation.
- The Development Management Guidelines for Planning Authorities require that conditions be necessary, relevant, enforceable, precise and reasonable.
- The current applicant does not have control over the lands relevant to these conditions, and so the condition cannot be complied with.
- The works required are outside the red line boundary of the site.
- Correspondence with KCC, indicates that these conditions have been partly complied with through ref. ref. 16/348 in particular condition 4. a).
- The Planner's Report notes the need for a taking-in-charge application.

6.1.2. The appeal is accompanied by copies of documentation relating to taking-in-charge of this estate.

6.2. Planning Authority Response

The response of Kilkenny County Council, received by An Bord Pleanála on 5th April 2019, indicates that the PA has no further comment to make.

6.3. Observations

None received.

7.0 Assessment

The principal issues of this appeal relate to the reasonableness of condition 1. b). I would be satisfied that the Board should only examine the condition which has been appealed, and that there is no need to look at the application *de novo*. Section 139(1) of the Planning and Development Act, 2000 (as amended), provides that the Board may restrict itself to considering the terms of the condition appealed, and- “may give to the relevant planning authority such directions as it considers appropriate relating to the attachment, amendment or removal by that authority either of the condition or conditions to which the appeal relates or of other conditions”.

7.1. Parent Permission

- 7.1.1. The parent permission for the Friars Hill housing estate is ref. P04/594 (subsequently amended). Following on from this, permission was granted ref. P16/348 for 16 houses on the two plots of land which are the subject of the current appeal to the Board. The minor difference between the two applications, is that the former provided for a retention element for some underground gas storage tanks within a public open space area to the north of the two sites as outlined in red in the current appeal. Apart from this, the two applications are largely similar. I note that the applicant for permission ref. P16/348 was the same Defigo Holdings 1 Ltd. This permission is still live – although no works in connection with construction of houses would appear to have been carried out. The development, the subject of the current appeal, makes minor modifications to the layout and house design of the 16 no. houses permitted under P16/348, but is largely for the same development. I note that permission ref. P16/348 was not subject to any appeal to An Bord Pleanála – by either 1st or 3rd Parties.
- 7.1.2. Permission ref. P16/348, was granted subject to 22 no. conditions. Of interest in relation to this current appeal are conditions 4 & 8, which are quoted in full here in the interests of clarity.

Condition 4:

a) No works shall commence on the subject sites until the main access roads (Roads 1, 2 & 5) within the development are completed in full, including the outstanding works for the installation of the bituminous wearing course, retrofitting of the existing

traffic calming measures, iron works, footpath modifications, roadmarkings [sic] and signage.

b) Stop control as opposed to Yield control shall be provided at the junction between Access Road 1 & 3. The Yield control proposed on Access Road 4 shall be omitted.

c) A 30kph Speed Limit / Slow Zone Signage shall be provided on the entry to the development, and the public road speed limit on exiting the development.

d) All road-markings and signage shall be in accordance with Department of Transport, Traffic Signs Manual, 2010.

e) Prior to the commencement of development, the applicant shall submit to the Area Engineer for written agreement a Construction Management Plan to include details regarding a Works Schedule for the phasing of the development, construction working hours, storage of construction materials, construction traffic and traffic management, access, supervision details etc. Construction on Sundays and Bank Holidays is not permitted, without prior written consent from the Planning Authority.

f) Prior to commencement of any works, the applicant shall submit to the Area Engineer for formal written agreement, a Roads Maintenance Programme for the construction phase of the development including street sweeping/cleaning in order to prevent muck/debris, excavated materials and construction materials interfering with the safe operation of the road. No materials either excavated or for construction purposes, shall be stored on the public road.

g) All works on the public road or works that require machinery to operate on the public road require a Road Opening Licence which can be obtained from Kilkenny County Council.

h) Directly following the completion of the works, the applicant shall undertake a Road Safety Audit Stage 3. The recommendations of same shall be submitted for the agreement of the Planning Authority. The cost to implement any such agreed recommendations shall be borne by the applicant.

Reason: In the interests of orderly development, traffic safety and residential amenity.

Condition 8:

a) Prior to commencement of construction of the houses all works in relation to the provision of the stone soakaway / infiltration system to cater for the entire

development of the housing scheme of Friarshill [sic] shall be completed in full to the satisfaction of the planning authority.

b) Until such time as the works specified in (a) above are fully executed the developer shall provide access to third parties to fulfil their legal obligation in the provision of surface water infrastructure required under parent permission P04/594 for the remainder of the scheme.

c) Prior to the commencement of the development, the developer shall submit for the written approval of the Planning Authority revised proposals for the soakaway / attenuation area. In order to minimise the volume of water discharging to the external storm system, the outlet from the soakaway shall be repositioned from the bottom of the soakaway to the tip (i.e. closer to the ground surface). A cross sectional drawing similar to drawing no. 202.

d) Prior to the occupation of the development the developer shall submit a copy of as built surface and foul sewers in the development. In addition the developer shall submit results of foul and surface sewer surveys demonstrating no mis-connections between the two systems.

e) Clean surface water only shall be discharged to the surface water drainage system.

Reason: In the interests of public health and for the protection of the environment.

7.1.3. The applicant contends that conditions 4 & 8 of permission ref. P16/348 (hereafter referred to as the parent permission) require compliance which would necessitate works outside of the site boundaries as outlined in red, and over which the applicant does not have the necessary control. There are other compliance conditions within the parent permission which would require works outside of the red line boundaries of the current appeal site – which the applicant has not referred to in the appeal. I note that the applicant has submitted a letter of consent to the making of the planning application from the owner of the site. There is no indication as to why the owner of the site would not consent to the carrying out of the necessary works – particularly as the works would also benefit existing occupants of houses within the estate. The appeal site forms part of a larger housing development – which has not been completed in accordance with the original permission granted, and which does not appear to have been taken-in-charge to date by KCC. From correspondence on the file, it would appear that KCC is working towards taking the estate in charge, and

reference is made to near agreement in relation to condition 4. a). Indeed condition 1. b) specifically excludes condition 4. a) of the parent permission – relating to completion of access roads 1, 2 & 5. Understandably, there are concerns in relation to roads and surface water within the estate. Many of the matters raised by the appellant are more properly a matter of consideration in relation to bonds which have already been paid by the developer(s), their use, remaining works which need to be completed, timescale for such completion, and any other matters arising in relation to who should carry out such works and who should/can pay for them.

- 7.1.4. The wearing course on estate roads has not been laid. It seems that the surface water attenuation within the smaller of the two plots which form this appeal site, has not been carried out either – but this is not entirely clear from the documentation submitted. Both these elements would also benefit existing residents of the housing estate. In the absence of such works being carried out, there is the possibility that the development could result in flooding of adjoining lands, which would be prejudicial to public health and detrimental to the residential amenities of adjoining property owners. Drawings submitted with the application indicate ‘Previously permitted soakway’ within the smaller of the two plots – in the southwestern corner of the overall estate. The proposed development will increase the impermeable area within this housing estate and, therefore, the level of surface water run-off. This run-off is discharged to a sewer within the Fairview housing estate to the south.
- 7.1.5. The works required by conditions 4 & 8 of the parent permission are necessary for the completion of the housing estate, and there is no reason why the developer and/or owner should not carry out the works, in the interest of residential amenity, traffic safety and public health. The appellant refers to the ‘Development Management Guidelines for Planning Authorities’ – issued by the Department of Environment, Heritage and Local Government in June 2007. These Guidelines require that conditions be necessary, relevant, enforceable, precise and reasonable. I would consider that conditions of the parent permission come within the scope of all of the above. The fact that the applicant and owner of the site have chosen to define the site by way of red-line boundary is a matter for themselves, and there is no good reason why the red line boundary of the site could not have been drawn differently.

7.2. Design & Layout

7.2.1. The proposed development involves only very minor layout modifications and changes to house types over and above what was granted by way of permission ref. P16/348. I would see no difficulty with the amendments proposed. Of particular note is the proposal to reduce the height of the retaining wall which forms the southern boundary of the larger of the two plots. This wall constitutes an overbearing feature within an otherwise pleasant housing estate on sloping ground – particularly for those houses on Road 1 which face the structure. The reduction in height would considerably improve the visual amenities of this housing estate. If necessary for safety purposes, a railing could be erected on top of the reduced-height wall.

7.3. Other Issues

7.3.1. Financial Contribution

Condition 2 of the Notification of decision to grant planning permission required the developer to pay a development contribution of €44,062.50. The applicant has not appealed this condition.

7.3.2. Appropriate Assessment

The site comprises infill development within an existing housing estate – where permission has been granted, and exists, for housing on the two parts of the current appeal site. The application is in the nature of a change of house-type – with minor modifications to the housing layout. The site is neither within nor immediately abutting any European site. The closest such is the Douske River, which forms part of the River Barrow and River Nore SAC – located some 175m to the southwest. Having regard to limited nature of the proposed development, and to the fact that it will be connected to the public sewer network, no Appropriate Assessment issues arise; and it is not considered that the proposed development would be likely to have a significant effect individually, or in combination with other plans or projects, on an European site.

7.3.3. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, 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 stage, and a screening determination is not required.

8.0 Recommendation

I recommend that condition 1. b) be restated, for the Reasons and Considerations set out below; and that Kilkenny County Council be directed to attach the said condition.

9.0 Reasons and Considerations

Having regard to the pattern of development in the area, the planning history of the site, and the need to complete the development of this housing estate in accordance with the parent permission, particularly as it relates to roads and drainage issues, it is necessary to attach condition 1. b), in the interests of the residential amenity of existing and future residents of the estate and in the interest of public health.

**Michael Dillon,
Planning Inspectorate**

27th June 2019.