



An
Bord
Pleanála

Inspector's Report

ABP-304111-19

Development	Construction of 4 houses, new vehicle access and extension to existing cottage on site.
Location	Mullantine, Rathangan, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	1915
Applicant(s)	Karin Klinkenbergh
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Michael Hoey
Observer(s)	None
Date of Site Inspection	18 th of September 2019.
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site.0.483Ha, is located on the south-western outskirts of Rathangan town, Co. Kildare. The town is quite spread out along its southern axis, and the subject site is located along a road entering the town from the south (Regional Road 141) as it takes a sharp angle east at the subject site due its junction with the Grand Canal.
- 1.2. The site is a triangular brownfield site, with a small cottage positioned along the road frontage, with a number of sheds dispersed throughout the site. In general the site is overgrown and unkempt to the rear and side of the habitable cottage. The applicant resides in the cottage on site.
- 1.3. To the south there are a number of one-off houses in the form of ribbon development, and further south on the opposite side of the R141, is the Acorn Business Park.
- 1.4. Directly opposite the site, is large playing fields contained within a sports complex. Immediately to the to the north and western boundary of the site, is the Grand Canal. There is an old stone bridge immediately north of the site which is elevated, and one can see into the entire site from this position, and along the tow path associated with the Grand Canal.

2.0 Proposed Development

- 2.1. The proposed development consists of clearing the site and the construction of 4No. dormer bungalows. It also proposed to extend the existing cottage on site at the rear, maintaining the same front vernacular elevation.
- 2.2. The existing access onto the Regional Road (R414) serving the cottage, will be closed and a pedestrian access will be provided at this location. A new vehicular entrance is proposed to serve the 4No. new dwellings and the cottage at the southern extremity of the roadside boundary.
- 2.3. The development would be fully serviced by public infrastructure.

3.0 Planning Authority Decision

3.1. Decision

Kildare Co. Co. granted the proposed development subject to 27No. conditions. The conditions are standard planning conditions.

No. 5 is most relevant to this appeal:

Where the applicant proposes to connect to a public water/ wastewater network operated by Irish Water, the applicant must sign a connection agreement with Irish Water prior to the commencement of the development and adhere to the standards and conditions set out by the agreement. In the interests of public health and Environmental Sustainability, Irish Water Infrastructure capacity requirements and proposed connections to the Water and Waste Water Infrastructure will be subject to the constraints of Irish Water Capital Investment Programme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report formed the basis of the decision to grant. It is considered the applicant addressed the concerns of the previous refusal on site in the current application.

Recommendation : Grant

3.2.2. Other Technical Reports

There were no objections to the proposal from the following departments and prescribed bodies:

- Transportation
- Water Services
- Environment
- Heritage Officer
- Irish Water
- Waterways Ireland

3.3. Third Party Observations

There were 2No. objections.

One from the neighbouring resident to the south who is concerned about overlooking and overdevelopment. The second is from the third-party appellant expressing similar concerns to those cited on appeal.

4.0 Planning History

Planning registration number **18/816** was refused to the same applicant and site for 6No. dwellings for four reasons:

- The subject site is zoned B: Existing Residential/ Infill in Rathangan Town Plan Volume 2, however the proposal is considered to be overdevelopment
- It would seriously injure the amenities of the dwelling to the south by reason of visual dominance and overlooking
- Removal of native hedgerows unacceptable
- Inadequate sightlines

5.0 Policy Context

5.1. Development Plan

Kildare County Development Plan 2017-2023

Volume 2 : Rathangan Small Town Plan

The subject site is zoned **B- Existing residential** – *to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services.*

RN1: To encourage the development of residential schemes over the lifetime of the Plan largely within Town Centre and new Residential zones in accordance with the principles of proper planning and sustainable development.

5.2. Natural Heritage Designations

The nearest Natura 2000 site to the subject development is Pollardstown Fen SAC which is 9.72km to the south east. Mouds Bog SAC is 12km east of the Rathangan, and River Barrow And River Nore SAC is 11Km south of Rathangan

5.3. EIA Screening

Having regard to the planning history of the site, the brownfield nature of the subject site, together with the scale of the proposed development, 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.

6.0 The Appeal

6.1. Grounds of Appeal

The relevant issues of the third-party appeal are summarised below. The third-party appeal raises concerns that are clearly beyond the remit of the Board and the planning application.

6.1.1 There is no basis in law the proposal supports the common good.

No retention of the removed road boundary was applied for. The local authority cannot grant retention as described in the planning application.

6.1.2 The water supply for the development is not assured. The water supply in Rathangan is a blended supply, consisting of a combination of water from Ballymore Reservoir and water from the local wellfields. It is an objective of the Council under RN 31 to improve and extend the water supply to Rathangan in conjunction with Irish Water.

Condition No. 5 stipulates the applicant must sign a connection agreement to receive a constrained water supply (from local wellfields).

Other than Kildare Co. Co. obligation to supply an uninterrupted water supply through Intel in Leixlip, there is no such obligation on Kildare Co. Co. or Irish Water

to ensure either the quantity or the quality of water for domestic use. The system to supply water to households is conditional on Irish Water, which operates emergency notices of water restrictions, and pressure restrictions. Thereby allowing Irish Water to act with impunity which providing a substandard chemical laced toxic and carcinogenic water supply which is not sustainable.

6.1.3 With reference to the non-technical report for Groundwater Abstraction at Rathangan, there were 7No. wells drilled in 2001, to abstract 5mega litres/ day. There was no EIA carried out because the Board considered the development would not have signifigant effects on the environment. The reduction in the planned volume of water from 5ml/ day to 2Ml/ day implies it would have a signifigant effect on the environment and existing water sources for West and Mid Kildare area will not be capable of meeting the future needs of the area. Effectively the water supply is from the Barrow navigation with the consent of Waterways Ireland, which they are not empowered to do.

In relation to the water supply for Kildare town the development plan states under WS1 to provide water for all zoned lands, and where deficiencies exist the Council will facilitate only as much development as can be provided for based on water supply. How come Kildare town gets preferential treatment over Rathangan.

A sustainable water supply has not been secured for Rathangan or Kildare town.

6.1.4 A grant of permission has a right to a full wholesome supply of water which the supplier cannot guarantee and stand over, and be held accountable if the water is deficient.

6.1.5 The reporting planner failed to identify River Barrow Nore SAC which is in the catchment downstream of the outfall from the Rathangan sewage treatment works (which discharges to the Slate River a tributary of the Barrow). The sewage works was built and upgraded without ever giving effect to EIA and Habitats Directive.

6.1.6 The Board will have to revisit and appraise the success of their previous decisions identified in table 1 and re-examine the consequences of not carrying out and EIA or appropriate assessment including all of the discharge decisions which have been made for the municipal treatment works in the upper reaches of the catchment). This contested development has to be treated as a sub-threshold development due to past failures complying with EIA and AA.

6.1.7 Condition No. 5 should not be imposed, a householder has a right to water. It should be refused instead of restricting water supply.

In 2005 the River Barrow became an important source of water for one third of the Population of the Greater Dublin Area. The status of the R. Barrow and the Slate River is unknown and no legitimate decision to grant development consent can or could be made until the Interference Notice, which was issued in March 2013 is resolved by the High Court.

6.1.8 There is no data provided to be able to ascertain or state that there will or is no potential significant affects from the proposed development. The in combination affects have not been assessed for thirty years and this is a requirements in terms of the Barrow/ Nore SAC.

6.1.8 The Water Services Section raised no objection

6.2. **Applicant Response**

The third-party appellant is a serial objector to developments in Rathangan, and his personal agendas against all development in Rathangan have no relevance to particular planning decisions.

The proposal is the provision of a low-density housing development on residentially zoned land in the urban area of Rathangan.

The hedgerow removal was done to provide a sightline for the adjacent house permitted under PL03/225.

The applicant, is the sole, legal owner of the site.

The appeal is vexatious, the sole purpose is to prevent the applicant from moving one with her life after a legal separation from the third party appellant.

6.3. **Planning Authority Response**

The planning authority has no further observations to make in respect of the appeal.

7.0 Assessment

7.1 The main concerns raised in this appeal relate to the grounds of the appeal. Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Compliance with development plan
- Design and Layout
- Infrastructural issues
- Other Matters
- Appropriate Assessment

7.2 ***Compliance with Development Plan***

7.3 The subject site is zoned B 'Existing Residential' in Volume 2 Rathangan Small Town Development Plan which forms part of the ***Kildare County Development Plan 2017-2023***. Residential developments are *Permitted In Principle* under this land use zoning objective, in particular appropriate infill which describes the current proposal. It is also National Planning Framework policy to increase residential densities at appropriate locations. The zoning objective is to provide for infill developments within existing residential areas, and the existing site is 0.484Ha and it is a serviced site within a town boundary, and it includes only one small cottage at the present time. The addition of 4No. dwellings on the site and the extension of the existing dwelling, is a sustainable form of residential development, and is in compliance with the National Planning Framework, February 2018 and the DOEHLG publication *Sustainable Residential Development in Urban Areas*.

Having regard to the existing pattern of development in the area, which appears to be ribbon development along the R414 south of the site, the proposed cluster of dormer bungalows beside sports facilities and the Acorn Business is an appropriate form of residential development and density, at this location on the outskirts of Rathangan and would be compatible with local and national policy objectives. In my opinion, the site is

currently under-utilised, and has the benefit of been serviced and close to amenities and services with the town.

7.4. Design and Layout

The subject site is an infill site located on the southern outskirts of Rathangan along the banks of the Royal Canal and it is highly visible from an adjoining bridge crossing the canal to the north of the site. The site is visible from the approach along the R414 into the town, and presently the shed, fencing and outbuildings area unsightly when viewed from the public road. To the east is a large sports complex, and further east there is more residential developments and a school. There is linear development to the south of the site. The Grand Canal abounds the site to the west and beyond that is the Rathangan Wastewater Treatment Plant.

The proposed layout consists of 4No. detached dormer bungalows serviced by a single entrance to the south with a service road fronting the dwellings and a public open space area. The houses are setback from the public road by 24-34metres, and each dwelling has a deep rear garden area ranging from 13.5-37.8metres. The houses are gable fronted. The cottage at the northern end of the site will be extended to the rear, and it will remain single storey throughout.

Overall the design is safe, functional and in keeping with national design standards for sustainable living.

I would prefer more attention given to design and finishes of the rear aspect of the development as viewed from the Grand Canal. I note a variety of design options have been presented in the submission documents for the rear elevations of the dwellings. The rear revelation, boundary treatments, and landscaping need further consideration in terms of the visual amenity of the Grand Canal.

7.5 Infrastructural Issues

This issue forms the main basis of the third-party appeal. The third-party appellant maintains the water supply to cater for the proposed development is not assured, and condition No. 5 prescribing a constraint in the water supply is unacceptable. In this regard, Irish Water has stated in its report of the 23rd of February 2019, it has no objection to the proposed development and recommended the 3No. conditions to be

attached to the planning decision by the planning authority. In addition, the Water Services Department of the planning authority had no objection to the proposed connection to the public infrastructure and there was no reference to poor water supply in the area, in the report dated 21/02/2019.

I am satisfied the relevant authorities regarding infrastructural services facilitating the site have no objection to the proposal, and there is no suggestion that there is an insufficient public water supply in the area to cater for the development.

7.6 Other Matters

The sightlines at the proposed entrance are adequate in both directions.

7.7 Appropriate Assessment

Having regard to the nature and scale of the proposed development and the distance from the nearest European site (Pollardstown Fen SAC which is 9.72km to the south east), 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 a European site

8.0 Recommendation

I recommend permission be granted subject to the following reasons and considerations, and conditions.

9.0 Reasons and Considerations

Having regard to:

(a) The Kildare County Development Plan, 2017 - 2023 according to which the areas within the site are subject to the zoning objective **Existing residential** – to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services

(b) Sustainable Residential Development in Urban Areas (DoEHLG, 2009) recommending higher densities on serviced lands

(c) the location on under-utilised land within a well serviced, outer suburban area with a wide range of services, amenities and facilities;

(d) the established pattern and character of existing development in the area; and

(e) the design, form, height, materials and external finishes for the dwellings, the internal layout of the proposed residential units and private open space provision,

it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the national strategic policy and local development policies and objectives for the area, would not seriously injure the integrity, setting and character of the protected structure, or the visual and residential amenities of the area, would not adversely affect traffic safety, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 in writing 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. Prior to the commencement of the development the following shall be submitted to and agreed with the planning authority in writing:
 - The rear elevation finishes, and specification shall be appropriate to its important setting along the banks of the Grand Canal;

- Rear Boundary treatment and partition boundary fencing shall be sympathetic to the sensitive setting
- A sympathetic landscaping plan for the rear garden and boundary areas to include ornamental trees;

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of the development, the applicant shall submit and agree in writing proposals for increased on site attenuation in accordance with the *Greater Dublin Regional Code of Practice for Drainage Works*.

Reason: In the interest of public health.

4. The applicant or developer shall enter into water and/or waste water connection agreement(s) with Irish Water prior to the commencement of this development. The applicant shall comply with the requirements specified by Irish Water.

Reason: In the interest of public health.

5. Details of the materials, colours and textures of all the external finishes to the proposed development, including external lighting throughout the development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenities.

6. (a) The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, and kerbs and car parking bay sizes shall comply with the requirements of the Design Manual for Urban Roads and Streets, in particular carriageway widths and corner radii within the

development shall be in accordance with the guidance provided in the National Cycle Manual.

(b) The materials used in any roads/footpaths provided by the developer shall comply with the detailed standards of the planning authority for such road works.

Revised drawings and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interests of pedestrian, cyclist and traffic safety.

7. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and numbers shall be provided in accordance with the agreed scheme.

Reason: In the interests of amenity and of the proper planning and sustainable development of the area.

8. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

9. The developer shall appoint and retain the services of a qualified Landscape Architect (or qualified Landscape Designer) as a Landscape Consultant, throughout the life of the construction works and shall notify the planning

authority of that appointment in writing prior to commencement of development. A practical completion certificate shall be signed off by the Landscape Architect when all landscape works are fully completed to the satisfaction of the planning authority and in accordance with the permitted landscape proposals.

Reason: To ensure full and verifiable implementation of the approved landscape design.

10. All of the houses shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements, including details of design of, and signage for, the electrical charging points shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of sustainable transportation.

11. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

12. The demolition and clearance of the site and the construction of the development shall be managed in accordance with a Demolition, Waste and Construction Management Plan which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of clarity, amenities, public health and safety and sustainable development.

13. Site development and building works shall be carried out only between the hours of 0700 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

14. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

15. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

16. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority full details of the proposed public lighting, including the lighting levels within open areas of the development.

Reason: In the interests of public safety and residential amenity.

17. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

18. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to

apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

19. 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 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

3rd October 2019