



An
Bord
Pleanála

Inspector's Report

ABP-304311-19

Development	Construction of 3 houses and associated site works.
Location	Knockyclovaun, Ard na Deirge, Killaloe, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	18580
Applicant(s)	ODM Properties Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Rathbrae Land Ltd.
Observer(s)	None.
Date of Site Inspection	27 th June 2019.
Inspector	Brid Maxwell

1.0 Site Location and Description

1.1. The site of the proposed development has a stated area of 0.12ha and is located to the north-western side of Killaloe, in east Co Clare. The site is accessed from the Ard na Deirge¹ residential estate within which construction works are ongoing. The site is essentially an infill site within the developing estate and has evidently been subject to recent site clearance and recontouring. The site is not immediately contiguous with the access road, and an intervening strip (future incidental open space) is in the ownership of the developer of the overall estate. Application details indicate that development of the wider estate is occurring in a phased manner in accordance with an eradication management plan for due to the presence of invasive species Japanese Knotweed and Himalayan Knotweed. Levels on the appeal site show dramatic variation with significant fall of c10m from the rear to the front. Adjacent dwellings incorporate substantial retaining walls which notably impact on the usability and quality of rear garden space.

2.0 Proposed Development

2.1. The proposed development involves the construction of 3 no detached two storey dwellings 127 sq.m and all associated site development works. The proposed dwellings incorporate painted plaster walls and stone finish to projected gabled elements to front elevation.

2.2 In relation to Part V an exemption certificate has been granted by Clare County Council.

3.0 Planning Authority Decision

3.1 Decision

¹ Variously also referred to as Arda na Deirge.

3.1.1 By order dated 29th March 2019 Clare County Council issued notification of its decision to grant permission and 14 conditions were attached which included the following of particular note:

Condition 6. "The internal roads, footpath lighting and open space shall be fully in situ of Planning reference P15/723, to the satisfaction of the Planning Authority, prior to occupation of the proposed dwellings."

Condition 8. The construction of the development shall be managed in accordance with the site assessment and management plan for the eradication of non-native invasive species received by the Planning Authority on 5th March 2019.

Condition 13. Development Contribution €16,647 in accordance with the Development Contribution Scheme.

Condition 14. Bond €15,000

3.2 Planning Authority Reports

3.2.1 Planning Reports

Initial planner's report sought further information with regard to stepped layout, adherence to established building line, levels and extent of retaining walling, Further information also requested with regard to legal interest invasive species management plan and proposed connection to Irish Water infrastructure.

Final Planning report recommends permission subject to conditions.

3.2.2 Other Technical Reports

None

3.3 Prescribed Bodies

3.3.1 Irish Water requires further information regarding proposed connections to public infrastructure. Correspondence from Irish Water submitted by the first party in response to the Council's request for additional information indicates that proposed connection can be facilitated. The wastewater connection requires an upgrade at the

Wastewater Treatment plant in order to facilitate the proposed connection. With regard to the water connection, as the site is elevated, pressure boosting may be required to be installed on the site by the developer. In the case of wastewater connections this assessment does not confirm that a gravity connection is achievable. Therefore, a suitably sized pumping station may be required to be installed on the site. Irish Water is currently advancing a capital investment plan project to provide increased capacity for future development in the Killaloe/Ballina agglomeration. The project is currently at design stage. A storm tank is required to increase the plant's capacity in order to cater for the development. Irish Water is currently accelerating this element of the Capital investment plan to facilitate this and other connections in Killaloe Ballina in advance of the main project.

3.4 Third Party Observations

3.4.1 Submission by McNamara Solicitors on behalf of Rathbrae Land Limited, developers of the Ard na Deirge estate. Submission questions legal entitlement to access development over the temporary road. Application is premature. Proposal is out of character with adjacent development. Retaining wall required towards rear of the site. Land forward of the front garden of the proposed houses within the ownership of Rathbrae Ltd. and it would be inappropriate to grant further planning permissions until the developer has had an opportunity to either finish out the estate or agree with local authority that current phases of the estate are completed to requisite standard to allow for release of substantial bond of €145,000. In the circumstances any Planning Application for the site is wholly premature and would only be appropriate once the balance of the site has been fully developed and indeed taken in charge if appropriate.

4 Planning History

4.1 There are a number of decisions relating to sites within the overall Ard na Deirge Estate

ABP304310-19 P18/581 Concurrent appeal by ODM Properties Ltd. relating to construction of 2 houses and associated site works.

18/582 Application for construction of 2 detached dwellings and all associated site development works, by ODM Properties Ltd. on site the northwest of the appeal site. Withdrawn 1/4/2019.

15/723 Permission granted 22/6/2016 for the construction of 35 residential dwellings including 8 semi-detached and 27 detached houses, landscaping and ancillary works. Condition 2 specified permission duration of 7 years having regard to the nature of the development and the site management plan for the eradication of knotweed. Permission expires on 22/7/2023.

17/993 Refusal of permission for 2 dwellings on grounds of location within permitted public open space (PL03.239393 11/36) and insufficient information with respect to access.

302823 18/621 Refusal of permission to ODM Properties Limited for two semi-detached dwellings and all associated site development works on basis of designated open space 239393 and substandard piecemeal development.

239393 11/36 Construction of two houses. Retention of as built and completion of 25 houses, estate roads, boundary treatments, street lighting entrance from public roadway and all associated site works

5 Policy Context

5.2 Development Plan

5.2.1 The Clare County Development Plan 2017-2023 refers. The settlement policy for Killaloe Municipal District is contained within Volume 3C.

The Site is zoned residential – The objective is *“Residential use shall be taken to primarily include the use of land for domestic dwellings. It may also provide for a range of other uses particularly those that have the potential to foster the development of new residential communities”*

The overall site of which the appeal site forms part is identified as R1 Land to the Rear of the Benson Box Factory. The plan states that *“This is a large site that has been partially developed. Development Proposals for these lands must be accompanied by a masterplan outlining the proposed future use of the site remaining undeveloped lands on the site.”*

The masterplan must incorporate a habitat and species survey followed by an Ecological Assessment. This will inform the appropriate assessment process where necessary.”

5.3 Natural Heritage Designations

5.3.1 The site is within 900m of the designated area of the Lower River Shannon SAC (Site Code 002165) .

5.4 EIA Screening

5.4.1 Having regard to the nature and scale of the proposed development and the location of the site, 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 The Appeal

6.1 Grounds of Appeal

6.1.1 The appeal is submitted by McNamara Solicitors on behalf of Rathbrae Ltd. Grounds of appeal are summarised as follows:

- Development is premature particularly given the position regarding water and waste water connection and non-native invasive species present on the site.
- Concern regarding layout of the proposed dwellinghouses and negligible space between each dwelling. Proposal is out of character with adjacent development. Retaining walling.
- Legal entitlement to access development over the temporary road is questioned and strip forward of front garden is within the ownership of Rathbrae Ltd. It would be inappropriate to grant further planning permissions until the estate is finished out or agreement reached with the local authority that current phases of the estate are completed to requisite standard to allow for release of substantial bond of €145,000. Any Planning Application for the site is wholly premature and would only be appropriate once the balance of the site has been fully developed and indeed taken in charge if appropriate.

6.2 Applicant Response

6.2.1 The First Party did not respond to the appeal.

6.3 Planning Authority Response

6.3.1 Planning Authority response notes that significant advances have been made to date on the wider development of the surrounding lands as per 15/723. Proposed development can only proceed / be inhabited at such time when ancillary enabling works are completed. Refer to Section 34(13) of the Planning and Development Act 2000 (as amended). Condition 6 requires infrastructure to be in place prior to occupation. Ongoing capacity issues in the Ballina Wastewater Treatment Plant are acknowledged however is noted that the Board recently granted permission for 9 houses in Ballina (ABP302828-18). In relation to invasive species, planning

permission 15/723 was given a 7-year permission having regard to the nature of the development and site management plan for eradication of Knotweed. Condition 4 of 15/723 requires the details and results of the monitoring programme to assess the impact and progress of the eradication of the invasive species on site shall be submitted annually and agreed with the planning authority prior to commencement of phases 2,3 and 4. To date the Planning Authority have not been made aware that there is any issue with the eradication programme.

7 Assessment

7.1 I consider that the proposed development can be assessed under the following broad headings:

- Principle of Development. Design and Layout
- Wastewater Treatment
- Invasive Species
- Appropriate Assessment.

7.2 Principle of Development Design and Layout

7.2.1 On the matter of the principle of the development, I note the residential zoning objective pertaining to the site and the fact that the proposal will integrate with the permitted Ard na Deirge housing scheme in terms of infrastructure and layout. In this regard I consider that the principle of the proposed development on the site is acceptable subject to detailed matters. The proposed houses are similar in scale and design to the existing and permitted dwellings and I do not consider that they are out of character with existing and permitted development as alleged by the third-party appellant. I note that following the Council's request for additional information amendments were made to the proposed finished floor level to conform to the stepping of adjacent sites. Details of retaining walling were also provided. While the layout does not strictly adhere to the building line established by the dwellings to the south east (in order to provide for car parking space within the site boundary) I am satisfied that the variation is acceptable in the context. Separation distance between dwellings is adequate.

7.2.2 As regards the applicant's legal entitlement to carry out the works, I note that the applicant submits that the contract of sale for the site demonstrates extent of ownership and rights of access to roads and services to implement the permission. I consider that these matters are essentially civil matters between the parties and are not strictly matters for determination within the scope of planning legislation. In this regard I would refer the parties to Section 34 (13) of the Planning and Development Act 2000, as amended as follows:

"A person shall not be entitled solely by reason of a permission under this section to carry out a development."

7.3 Wastewater Treatment

7.3.1 The third-party appellant asserts that the development is premature on the basis of wastewater capacity issues. I note that correspondence from Irish Water to the first party, submitted in response to the Council's request for additional information acknowledges engagement with regard to pre-connection consent. The correspondence confirms that subject to a valid connection agreement being put in place a connection to Irish Water Networks can be facilitated. Irish Water notes that the wastewater connection requires an upgrade at the wastewater treatment plant to facilitate the connection. Irish water is currently advancing a capital investment plan project to provide increased capacity for future development in the Killaloe / Ballina agglomeration. The project is currently at design stage. A storm tank is required to increase capacity to cater for the proposed development. Irish water is currently accelerating this element of the capital investment plan to facilitate connections in advance of delivery of the main project. I note that the Board recently granted permission for 9 dwelling houses in the Ard Coillte estate in Ballina (ABP302828-18) subject to the following condition:

"No development of the proposed dwelling houses shall commence until the upgrading works at the Ballina Wastewater Treatment Plant to facilitate the development are completed, and the developer has obtained a Connection Agreement from Irish Water to connect into the upgraded Waste Water Treatment Plant. Reason: To ensure there are no adverse effects on the integrity of the Lower River Shannon Special Area of Conservation"

7.3.2 I consider that it is appropriate that this condition would also apply to the current appeal case. I note that the decision ABP302828 also included a requirement for payment of a financial contribution to Irish Water in respect of the necessary works to upgrade the Ballina Wastewater Treatment Plant in order to facilitate the proposed development. I note from the Inspector's report in that case that following discussions on the matter with Irish Water the first party indicated a willingness to make such a contribution to advance the upgrade works if required. I note that there is no reference to a requirement for a special contribution by Irish Water or within the decision of Clare County Council within the current appeal case.

7.4 Invasive Species.

7.4.1 As regards the matter of invasive species, I note the Invasive Species Management Plan by Frances Giaquinto, Ecological Research and Practice submitted in response to the Council's request for additional information. It noted evidence of Himalayan Knotweed on the site due to construction works. The residual infestation is weak and does not pose a problem for development of the site as long as conditions are adhered to relating to implementation of appropriate biosecurity measures. Monitoring and securing of southern site boundary from incursion of infestations recorded on the adjacent land is recommended.

7.4.2 It is noted that the original permission 15/723 was conditional on the completion of measures outlined set out in a site-specific management plan to eradicate Japanese Knotweed and Himalayan Knotweed, prepared by Frances Giaquinto in 2016. Since then Nicholas Head of Knotweed Ireland Services has been retained on the site by Rathbrae Lands Ltd to conduct systematic eradication with glyphosate applied by stem injection. I consider that the proposed mitigation measures for the appeal site are reasonable and note that the original permission will expire in July 2023. In light of the invasive species issue arising it is appropriate that a consistent and co-ordinated approach would be adopted.

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 Recommendation

8.1 On the basis of the foregoing assessment I recommend that the Board confirm the decision of Clare County Council to grant permission subject to the following.

9 Reasons and Considerations

9.1 Having regard to the zoning objective pertaining to the site as set out in the Clare County Development Plan 2017-2023 and to the planning history on the lands and to the prevailing character and form of established and permitted development in the vicinity, it is considered that subject to compliance with the conditions as set out below the proposed development would form an acceptable development on the site, would not seriously injure the visual amenities of the area, would comply with the policies and objectives of the Clare County Development Plan and would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on 5th March 2019 , 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 and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. No development of the proposed dwelling houses shall commence until the upgrading works at the Ballina Wastewater Treatment Plant to facilitate the development are

completed, and the developer has obtained a Connection Agreement from Irish Water to connect into the upgraded Waste Water Treatment Plant.

Reason: In the interest of public health and to ensure there are no adverse effects on the integrity of the Lower River Shannon Special Area of Conservation.

3. Prior to the making available for occupation of any house, the internal roads, footpaths, lighting and open space shall be provided pursuant to planning reference P15/723 to the satisfaction of the Planning Authority.

Reason: To ensure timely and satisfactory provision of such site development works.

4. The dwelling houses shall be constructed and completed using the same palette of materials, colours and textiles as the existing adjoining dwellings within the housing scheme unless otherwise agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. The development shall be carried out in accordance with the mitigation measures outlined in the site assessment and Management Plan for the Eradication of Non-Native Invasive species received by the Planning Authority on 5th March 2019.

Reason: To prevent the spread of invasive species in the interest of residential and visual amenity.

6. 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.

Reason: In the interest of public health.

7. 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 interest of visual and residential amenity.

8. 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, noise management measures and off-site disposal of construction/demolition waste.

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

9. Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion of roads, sewers, water mains, drains, car parks, open spaces and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The security amount to be lodged shall be agreed with the planning authority in writing prior to the commencement of the proposed development. security as may be accepted in writing by the planning authority.

Reason: To ensure the satisfactory completion of the development.

10. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals for this shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

11. 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.

12. 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 or roads, footpath, 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.

Bríd Maxwell
Planning Inspector

30th July 2019