



An  
Bord  
Pleanála

## Inspector's Report ABP-304615-19

<b>Development</b>	Change of House design for the 2.5 storey, detached house of c.155 sq.m. granted under planning ref. 16/254, to a 2.5 storey, detached of c.261 sq.m., with the inclusion of a single-storey, flat- roof extension to the rear, and all ancillary site works
<b>Location</b>	78 Willouise, Sallins, County Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	1982
<b>Applicant(s)</b>	William Ward.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission with conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Frank Reynolds.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	16 <sup>th</sup> September 2019.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

1.1. The appeal site has a stated area of 0.044 hectares is located within a partially constructed housing development (construction ongoing), Willouise, located to the eastern side of Sallins, Co Kildare. The estate lies between the Sherlockstown Road and The Grand Canal. The appeal site is located at the north-eastern extremity of the development and is bordered to the northwest by the Sherlockstown Road, by pastureland to the east and by the construction site to the south and southwest. There is retaining concrete and blockwork wall located between the site and the road with a number of spoil heaps currently on the site and in the vicinity. Access road does not currently extend as far as the site.

## 2.0 Proposed Development

2.1. The proposal as described in public notices involves a change of house design from a 2.5 storey detached house of c155 sq.m granted under planning ref no 16/254 to a 2.5 storey detached house of c 261 sq.m with the inclusion of a single storey flat roof extension to the rear and all ancillary site works. In response to a request for additional information the proposal was revised to include a finished floor level of 89.7m AOD as per previously permitted house.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1 By order dated 09/05/2019 Kildare County Council issued notification of its decision to grant permission subject to 10 conditions which included the following:

Condition 2 Apart from the departures authorised by this permission the development to be in accordance with Previous permission 16/254.

Condition 4. External finishes to match existing as built units within the housing development.

Condition 10 Development Contribution €14,616 in accordance with the Development Contribution Scheme.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

3.2.1.1 Initial planning report sought additional information to include clarity with regard to discrepancy between proposed finished floor level and permitted finished flood level. The relationship between proposed dwellings 78 and 79 to be outlined. Final report recommends permission subject to conditions.

#### 3.2.2. Other Technical Reports

3.2.2.1 Area Engineer. No objection subject to conditions.

3.2.2.2 Water Services report No objection subject to conditions.

### 3.3. Third Party Observations

3.3.1 Submission by Derek Whyte on behalf of Mr Frank Reynolds owner of the adjacent lands to the north east.

- Site boundaries are incorrect and encroach on Mr Reynolds land.
- Willouise Development is unauthorised.
- Applicant cannot rely on multiple applications.
- Access unclear.
- Finished floor level inconsistent with parent permission.
- Subsoil illegally deposited on land
- Failure to construct boundary wall has compromised observer's lands.

## 4.0 Planning History

**PL09.217842 05/2084** Permission granted to Red Thorn Developments for a residential development of 116 units.

**12/236** 3 Year extension of duration for 05/2084 PL09.217842 to 24/4/2015

**15/1057** Permission granted for amendment to condition 2 of PL09.217842 for 300mm diameter surface water overflow pipe.

**16/135** Incomplete application for revisions to development granted under 05/2084 PL09.217842 and 12/236

**16/254** Permission granted to Glenthorn Properties for revisions to development granted under PL09.217842 05/2084 and 12/236. Permission granted for 78 dwellings and a child care facility.

## 5.0 Policy Context

### 5.1. Development Plan

The Kildare County Development Plan 2017-2023 and Sallins Local Area Plan 2016-2022 refer.

The site is zoned B Existing Residential / Infill within the Sallins Local Area Plan. *“To protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services.”*

### 5.2. Natural Heritage Designations

There are no designated sites within the vicinity of the site. Mouds Bog SAC (Site Code 002331) and Pollardstown Fen SAC (Site Code 000396) are located c. 9km and c. 11km respectively south-west of the site. Red Bog, Kildare SAC (Site Code 000397) is located c. 10km south-east of the site. Poulaphouca Reservoir SPA (Site Code 004063) is located 13km south-east of the site. Ballynafagh Bog SAC (site Code 000391) and Ballynafagh Lake SAC (Site Code 001387) are located c.9km north-west of the site.

### 5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, and to 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 and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1 The appeal is submitted by Derek Whyte Planning Consultant on behalf of Frank Reynolds, Hazelhatch, Cellbridge. Grounds of appeal are summarised as follows:

- Application 19/82 is fundamentally flawed and should have been invalidated.
- Unauthorised development has taken place on the site. This has been subject to complaint but has not been acted on by Kildare County Council.
- Proposed development is premature pending investigation and remediation of unauthorised development.
- Boundaries are incorrect and impact on appellant's land.
- Existing house constructed in the Willouise housing development has been constructed on appellant's lands and is unauthorised.
- Applicant cannot work off multiple applications. Proposal should either be a retention and completion or works should not be ongoing.
- Access is unclear. Finished floor levels are inconsistent with parent permission.
- Subsoil excavated and deposited on the appellant's lands.
- Applicant is under a legal obligation (as outlined in contract documents attached) to construct a boundary wall, access roads and service connections within the Willouise development which has not been undertaken to date compromising the appellant's lands.

### **6.2. Applicant Response**

6.2.1 The response submitted by Hughes Planning and Development Consultants on behalf of the first party is summarised as follows:

- Development is consistent with the relevant policies, objectives and standards of the Kildare County Development Plan 2017-2023 and accords with the proper planning and sustainable development of the area.
- Request that An Bord Pleanála disregard and dismiss the appeal in accordance with Section 138 of the Planning and Development Act 2000 as amended. The appeal is vexatious. Boundary disputes most appropriately dealt with by the courts and not within the planning process. The appeal also frivolous as it raises no planning issues relating the proposed development.
- Permission for provision of a dwelling on the site has been granted and the appeal does not relate to the proposed design.
- As regards works on the site preparatory works commenced on the site in accordance with the parent permission.
- Access to the site is established through the parent permission in the form of an internal access road to the southwest of the site.
- Finished floor level is in accordance with parent permission.
- Applicant indicates that soil to be removed from adjacent lands.
- Boundary walls, access roads and service connections will be completed as part of the overall Willouise Development.
- Applicant refutes allegation that unauthorised development has occurred on the site.

### **6.3. Planning Authority Response**

6.3.1 The Planning Authority maintains the position that the proposed development can be accommodated on the site as permitted by Reg Ref 16/254.

### **6.4. Further Responses**

6.4.1 Response from the third-party appellant to first party response to the appeal is summarised as follows:

- Letter from the applicants solicitor acknowledges issues raised and deposition of soil excavated from the applicants site and deposited on Frank Reynolds land.
- Allegation that the appeal is vexations is strongly rejected.
- Maintain contention that the appellant's lands are compromised.
- Binding legal contract is in place which has been breached.
- Recent survey of the site from Land base surveys attached highlights the encroachment of the development on the appellant's land. It shows the construction of a significant part of the house of the Willouise Development (No 116) on the appellant's lands by a considerable margin.
- Parent application is 05/2084 and not 16/254 which is an application within the parent permission.
- Appellant has the intention to develop his lands in the future.
- It is acknowledged that the legal issue is not part of the planning process however the development is clearly project spitting and the intrusion on appellants lands which renders the permission defective
- It the house is not in the correct location (by some 2 metres) then the road paths services are not in the correct location and access and services are incorrect. This cannot be within the scope of de minimis doctrine.
- Legal proceedings have been enacted against the developer but Kildare County Council have not addressed the issues raised in the planning submission.
- Appellant has the entitlement to clarity. There should be no ambiguity in terms of what is proposed location and levels. Permission should be refused and situation rectified via the planning process

## 7.0 **Assessment**

- 7.1. The main issues to be addressed within this appeal relate to the validity of the appeal and the acceptability of the proposed change of house design. The issue of appropriate assessment also needs to be addressed.

- 7.2. On the question of the validity of the appeal, this is a matter for the Board to determine. I note in accordance with Section 138 of the Planning and Development Act 2000 as amended, *“The Board shall have an absolute discretion to dismiss an appeal or referral – (a) where, having considered the grounds of appeal or referral, the Board is of the opinion that the appeal or referral –*
- (i) Is vexatious, frivolous or without substance or foundation, or*
  - (ii) Is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person, or*
- (b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered having regard to –*
- (i) the nature of the appeal (including any question which in the Board’s opinion is raised by the appeal or referral), or*
  - (ii) any previous permission which in its opinion is relevant.”*

7.3 I note that the first party in response to the appeal has requested that the appeal be invalidated on the basis that it does not raise planning issues related to the development proposed. Having considered the detailed grounds of appeal I am inclined to agree that the grounds of appeal do not address the specific development proposed, which is solely a change of house design. Instead the grounds raise matters extraneous to the development proposed. In this regard I consider that the appeal is without substance or foundation. I note that the grounds of appeal raise matters of enforcement which are beyond the remit of the Board in terms of determination of the appeal on its planning merit. I note that the appellant has indicated that legal proceedings have been enacted with regard to an alleged encroachment onto the appellants lands and it is appropriate that such matters are addressed by the courts. On the matter of alleged project splitting, I note that the current application is clearly set out as an amendment to permission 16/254 which in itself is a standalone permission granted on 29<sup>th</sup> August 2016. (on footprint of plots previously approved under 05/2084 PL.217842 and extended by 12/236). Any alleged unauthorised development or non-compliance with the terms of the permission is a matter for the Local Authority to determine, and to adopt the appropriate course of action accordingly.



- 7.4 Should the Board decide to accept the validity of the appeal and on the assessment of the proposed development on its planning merits, I note that the proposed change of house type involves an increased footprint from 155m<sup>2</sup> permitted to 251m<sup>2</sup> proposed. The dwelling adopts the permitted design format and extends to the side and rear. In response to the request for additional information it was clarified that the proposal will adopt the finished floor level of the permitted dwelling. I am satisfied that the plot can accommodate the increased footprint and consider that this is appropriate.
- 7.5 On the matter of appropriate assessment, having regard to nature and scale of the proposed development, the fully serviced nature of the site and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposal would 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. Having regard to the foregoing I recommend that the Board invalidate the appeal on the basis that it is without substance and foundation. In the event that the Board decide to determine the case on its planning merits, it is recommended that the Board confirm the decision of the planning authority to grant permission for the following reasons and subject to the following conditions.

## **9.0 Reasons and Considerations**

- 9.1 Having regard to the zoning objective pertaining to the site as set out in the Sallins Local Area Plan 2016-2022 and Kildare 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 Kildare County Development Plan and Sallins Local Area 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 18<sup>th</sup> April 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. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 4<sup>th</sup> day of October 2016 under reg ref no 16/254 and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. Prior to the making available for occupation of the house, the internal roads, footpaths, lighting and open space shall be provided pursuant to planning reference P16/254 to the satisfaction of the Planning Authority.

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

4. The dwelling house shall be constructed and completed using the same palette of materials, colours and textiles as the permitted 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 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.

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Bríd Maxwell  
Planning Inspector

18<sup>th</sup> September 2019