



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306528-20

<b>Development</b>	A mixed-use development of 2 no. two-storey apartment blocks comprising 5 no. 2 bed apartment units, 6 no. 1 bed apartment units and 1 no. ground floor commercial unit of 64.8 m2.
<b>Location</b>	An Dúiche, Scallagheen, Co. Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	19/600502
<b>Applicant</b>	Dolent Properties LP
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Parties v Grant of Permission
<b>Appellants</b>	(1) Denis Fitzgerald & Ruth Hadnett (2) Nora, Philomena & Áine Butler
<b>Date of Site Inspection</b>	28.04.2020
<b>Inspector</b>	Anthony Kelly

## 1.0 Site Location and Description

- 1.1. The site is in the southern outskirts of Tipperary town accessed via the existing An Dúiche residential development on Tipperary Road.
- 1.2. The site comprises a greenfield site adjacent to the junction of the vehicular access of An Dúiche and the public road. An Dúiche mainly comprises two-storey semi-detached houses externally finished in brick and render. There is a single-storey detached house adjacent to the south east of the site, a single-storey detached house to the north (part of An Dúiche) and the main area of An Dúiche to the west and north west. The area to the east and north east is agricultural land. There is a timber fence along the front boundary of the site, a concrete panel fence along the northern boundary and a low stone wall along the southern boundary adjacent to Tipperary Road. There are some trees along the north eastern boundary but the site itself is grassed and somewhat overgrown. There is a block wall boundary with the adjacent house to the south east.
- 1.3. The site has an area of 0.23 hectares.

## 2.0 Proposed Development

- 2.1. The development as applied for comprised a mixed-use development of 2 no. two-storey apartment buildings containing 5 no. two-bedroom units, 6 no. one-bedroom units and a ground floor commercial unit.
- 2.2. The proposed development had a floor area of 807.9sqm; 743.1sqm residential and 64.8sqm commercial. The structures have a height of 8.135 metres.
- 2.3. Further information was submitted and the development was amended, including:
  - A reduction in the number of apartment units from 11 no. to 7 no.
  - A revised footprint of Block A and a complete redesign of Block B.
  - Revised residential car parking arrangements within the site with a single access point onto the internal vehicular circulation road of An Dúiche.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 19 no. conditions relating to, inter alia, the use of the retail unit, archaeological monitoring, Irish Water connection agreement, public lighting provision, external finishes, surface water discharge, construction practices, submission of a Construction Management Traffic Plan, development contributions, a bond and a management company.

### 3.2. Planning Authority Reports

- 3.2.1. The Planning Reports formed the basis of the planning authority decision. The report considers that the development complies with the policies and objectives of the Tipperary Town and Environs Development Plan 2013, as varied, and does not have an adverse impact on the character of the area or the amenities of adjoining properties.

#### 3.2.2. Other Technical Reports

**Area Engineer** – Further to the further information response clarification of further information is recommended. This was addressed by way of a condition.

### 3.3. Prescribed Bodies

**Dept. of Culture, Heritage and the Gaeltacht** – No objection subject to a condition relating to archaeological monitoring of groundworks and excavations.

### 3.4. Third Party Observations

- 3.4.1. 34 no. submissions were received on the initial planning application. The submissions were from local residents and included An Dúiche Residents Association and 2 no. local representatives. The issues raised are largely covered by the grounds of appeal with the exception of the following:

- Existing anti-social behaviour in An Dúiche.
- There are existing vacant properties within An Dúiche.
- Previous refusal on site.

- Additional traffic generation/traffic hazard/car parking issues.
- Out of character with the existing type of dwelling.
- Potential erosion of social fabric from short-term rented units.
- An Dúiche is already subject of high density.
- Loss of landscaping and green area/inadequate open space provision.
- Less intrusive plans would be welcomed.
- It is a certainty that the units will be sold to a housing association resulting in 25% of the housing in An Dúiche being used for social housing, way above the 10% set down in a private development.
- Building apartments is contrary to the zoning objective to preserve and enhance existing residential amenity and will cause risk to existing residents by traffic hazard.

3.4.2. On foot of the further information response a further 16 no. submissions were received. The issues raised are largely covered by the grounds of appeal and the 34 no. submissions originally received with the exception of the following:

- Issues previously raised have not been adequately addressed.
- Disruption caused at the entrance to the estate.
- It is a new plan rather than additional information/the revised development was not re-advertised.
- Environmental impact from car fumes with an increase in the volume of traffic.
- Does the developer have an Exemption Certificate for Part V?
- The commercial unit will become an eighth apartment.
- Non-submission of the Development Impact Assessment.

## 4.0 Planning History

4.1. None relevant.

## 5.0 Policy Context

### 5.1. South Tipperary County Development Plan 2009 (as varied)

- 5.1.1. Section 1.6 (Relationship with Town Development Plans) of the 2017 update of the 2009 Plan states that Town Development Plans (including the 2013 Tipperary town plan) will remain the statutory plans for these areas until a review and preparation of Local Area Plans for these towns take place.
- 5.1.2. Chapters 4 (Planning Sustainable Communities) and 10 (Development Management Standards) relate to the application.

### 5.2. Tipperary Town & Environs Development Plan 2013-2019

- 5.2.1. The site is in an area zoned 'Existing Residential' (Land Use Zoning Map A). The zoning objective is to preserve and enhance existing residential amenity, ensuring that any new development does not result in excessive overlooking of existing residential properties, does not reduce general safety for existing residents and does not reduce the usability and security of existing public and private open space. As per the 'Proposed Land Use Zoning Matrix', residential development is permitted in principal on land with this zoning objective and a neighbourhood shop is open for consideration.
- 5.2.2. Chapters 6 (Housing) and 9 (Development Management Guidelines) are relevant to the application.

### 5.3. Sustainable Urban Housing: Design Standard for New Apartments Guidelines for Planning Authorities (2018)

- 5.3.1. As the development involves apartments these guidelines are relevant.

### 5.4. Natural Heritage Designations

- 5.4.1. The closest Natura 2000 site is Lower River Suir SAC approx. 5km to the south. The closest heritage area is Bansha Wood pNHA approx. 3.1km to the south east.

## 5.5. EIA Screening

- 5.5.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, which is a fully serviced urban location, 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal are submitted by Denis Fitzgerald & Ruth Hadnett, 1 An Dúiche and Nora, Philomena and Áine Butler, Scallagheen (the single-storey property adjacent to the south east). The main points raised can be summarised as follows:

#### Setting/Design

- The proposed structure is approx. 20 metres proud of the established estate building line.
- The proposed gable elevation is unconvincing, and the less appealing rear elevation will be partially visible on approach.
- First floor apartments have no ground level refuse bin storage facilities.
- First floor apartment balconies overlook the main entrance to the estate. It is likely these balconies will be used for airing clothes creating an unsightly aspect.
- Perimeter walls of balconies will have to be 1.1 metres over the finished floor level.
- The common area and open lobby entrance design for the apartments present a difficulty complying with building regulations.
- The proposal does not adequately reflect the potential of the site in its location as a completion element of the existing estate or as a gateway on the principle access point.

### Impact on Existing Residential Amenity

- The open balconies present a very significant loss of privacy to adjacent dwellings' back gardens and represent an undesirable change in character to the remainder of the estate.
- Rear windows of the first-floor apartments are only 5 metres from and will overlook the adjacent agricultural lands which may have implications for efficient planning of this land in future.
- Shadowing of windows on adjacent house to the south east.
- Overlooking of the adjacent house to the south east.
- The bin storage area with associated vermin, odour etc. is located adjacent to the house to the south east/general noise and disturbance from the bin area/security issues from proximity to the bin area and impact on the value of the appellants' property as a result.
- Increased traffic volumes during and after construction.
- Housing density already in An Dúiche

### Commercial Unit

- The shop unit will generate traffic and parking problems adjacent to a busy access with poor visibility.
- Inadequate provision for delivery vehicles.
- It will likely become the focal point for local youths with resultant noise and litter.
- Non-viability of the commercial unit.

### Procedural/Miscellaneous

- Not against the development of the site per se, just the type of development being proposed.
- The planning authority may have compromised their position in determining an application in which they acted as design consultants. The permitted development is a significant revision of the original application. There is no record of revised public notices.

## 6.2. **Applicant Response**

None received.

## 6.3. **Planning Authority Response**

The planning authority confirms its decision and the appeal raises no new issues.

## 6.4. **Observations**

None received.

## 7.0 **Assessment**

Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local and national policies and guidance, I consider that the main issues in this appeal are as follows:

- Setting/Design
- Impact on Existing Residential Amenity
- Commercial Unit
- Appropriate Assessment
- Procedural Issues

### 7.1. **Setting/Design**

7.1.1. The grounds of appeal make several references to the setting and design of the proposed development.

7.1.2. The footprint of Block A is closer to the road than the building line established by the front row of houses in An Dúiche. However, it is not a requirement to maintain this building line. The site is large enough and detached enough from the main body of the development of which it would form part to establish its own building line. It remains



more than 20 metres from the public road. In addition, the building line of the adjacent house to the south east is much closer to the road.

7.1.3. In terms of design I consider both blocks to be acceptable at this location and would not be out of character with the existing pattern of development within An Dúiche in terms of height, scale or external finish. The structures would form a new addition to the overall development, and I consider that their design would not be visually incongruous or obtrusive. The gable of Block A addressing the public road to the south is acceptable, with a commercial entrance on this elevation, and passive surveillance provided at both ground and first floors over the adjacent open space area. The rear elevations have reduced fenestration to reduce overlooking potential. I do not consider these elevations to be unacceptable. Balconies/terraces are an accepted form of private open space provision within apartments and the provision of these is required in the interest of the amenity of occupants and compliance with the apartment guidelines. In relation to compliance with building regulations, this issue will be evaluated under a separate legal code and thus need not concern the Board for the purposes of this appeal.

7.1.4. I consider the provision of a commercial unit and 7 no. apartments in 2 no. two-storey blocks to be an acceptable development type at the entrance to An Dúiche, in an appropriately zoned area within the boundary of Tipperary town.

## **7.2. Impact on Existing Residential Amenity**

7.2.1. The grounds of appeal refer to a number of issues affecting existing residential amenity such as overlooking potential, shadowing impact and bin storage.

7.2.2. The first-floor terrace to Apartment No. 4 in Block B is to the front of the building and does not overlook any private space to the rear of the adjacent detached single-storey house. Notwithstanding, I consider that the proposed north elevation window to Bedroom 1 within that unit should be omitted in the interest of the amenity of the adjacent house. Bedroom 1 would retain a west facing window. Windows and terraces along the western elevation of both proposed blocks and the southern elevation of Block A overlook public spaces and will have no impact on the private open spaces of any house. There are no first-floor windows to the rear of Block A. The first-floor rear elevation to Block B contains 2 no. bathroom and 2 no. kitchen windows. The kitchen

windows are approx. 5 metres from the boundary with undeveloped, but residentially zoned, land. I do not consider this would have an undue adverse impact on the ability to appropriately develop the adjoining property.

7.2.3. Given the relatively limited height of Block B, the separation distance involved and the absence of any window to the side of the adjacent single-storey house to the north I do not consider there will be any undue shadowing impact on the adjacent house. The revised footprint location of Block A is north of the adjacent detached single-storey house to the south east. No undue shadowing impact will occur to the adjacent house as a result of the revised footprint of Block A. Given that the scale of the two proposed blocks is similar to the existing pattern of development within An Dúiche it will not have any overbearing impact.

7.2.4. I consider that the matter of bin storage has not been fully addressed in the planning authority decision. A bin store area has been identified to the rear of Block A. It is unclear if this is for the commercial unit, Block A or for the overall development. Notwithstanding, in principle, I consider the identified bin storage location acceptable subject to appropriate sizing, construction and management. However, it is a significant distance from Block B and a second bin storage area for Block B may be appropriate for ease of access of residents as set out in the Sustainable Urban Housing: Design Standard for New Apartments Guidelines for Planning Authorities (2018). I consider that, should permission be granted, a compliance condition in relation to bin storage be included.

7.2.5. In conclusion, subject to the removal of the first-floor side elevation bedroom window to Block B and a compliance condition relating to bin storage I do not consider the proposed development would have an undue impact on existing residential amenity.

### **7.3. Commercial Unit**

7.3.1. The grounds of appeal identify a number of issues in relation to the proposed commercial unit.

7.3.2. A planning application is assessed on the basis of the development proposed and a commercial unit forms part of this. Condition 1 (b) of the planning authority decision restricted the use of the unit to use for the retail of convenience goods. Under the land use zoning matrix, a neighbourhood shop is open for consideration on land zoned

existing residential. I consider it appropriate to include a condition in any grant of permission to restrict the use of the unit in the interest of residential amenity.

7.3.3. I do not consider that traffic generation will be a significant issue for the commercial unit. The majority of users will likely be local people as it is not of a scale that would attract significant car usage. Notwithstanding, adequate car parking has been provided including a loading bay.

7.3.4. It is a matter for the applicant/developer to satisfy themselves whether or not the proposed commercial unit is viable. The Board's decision is based on the proper planning and sustainable development of the area and in this case, as the proposed unit is consistent with the provisions of the Tipperary Town & Environs Development Plan 2013-2019, I consider the provision of the commercial unit to be acceptable.

#### **7.4. Appropriate Assessment**

7.4.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location remote from and with no hydrological pathway to any European site, 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.

#### **7.5. Procedural Issues**

7.5.1. The grounds of appeal include reference to the manner the planning authority processed the application.

7.5.2. The processing of a planning application upon receipt is a matter for the planning authority. The planning authority decided to grant permission subject to conditions and its response to the grounds of appeal is set out in Section 6.3. This report and assessment represent my de novo consideration of all planning issues material to the proposed development.

## 8.0 Recommendation

I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Tipperary Town & Environs Development Plan 2013-2019, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of setting and design and would not seriously injure the amenities of the area or of property in the vicinity. 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 carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 05.12.2019, 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 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. (a) The first floor north/side elevation bedroom window to Apartment No. 4 in Block B shall be omitted.

(b) Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

3. (a) The use of the commercial unit shall be restricted to use as a shop as per Schedule 2 Part 4 Class 1 of the Planning & Development, 2001 (as amended).

(b) Details of all signage to the commercial unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the amenities of the area and visual amenity.

4. Water supply and drainage arrangements, including the 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.

5. Prior to commencement of development, the applicant or developer shall enter into a water and/or waste water connection agreement(s) with Irish Water.

**Reason:** In the interest of public health.

6. (a) Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 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.

(b) 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 traffic management, noise management measures and off-site disposal of construction waste.

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

7. 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.

8. The internal road network serving the proposed development [including junctions, parking areas, footpaths and kerbs] shall comply with the detailed standards of the planning authority for such road works.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

9. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any residential unit.

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

10. 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.

11. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

12. (a) All areas not intended to be taken in charge by the local authority shall be maintained by a legally constituted management company.

(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

13.(a) A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials for each unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

(b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

**Reason:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

14. 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.

15. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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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Anthony Kelly

Planning Inspector

14.05.2020