



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306860-20

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<b>Development</b>	Development consisting of 16No. dwellings and 3No. serviced sites with public service connections and upgrades at
<b>Location</b>	Lemybrien, Co. Waterford
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	19368
<b>Applicant(s)</b>	Denis Lillis, Michael Veale, P. Veale and S. Veale
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	D. Lillis, M. Veale, P. Veale and S. Veale.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13 <sup>th</sup> of July 2020.
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. Lemybrien is a small village located on the N25 linking Cork City to Waterford City. It lies at the foothills of the Comeragh Mountains. The mountains create a scenic backdrop to the village to the north and provide a specular vista from the village and the subject site to the north/ northwest.
- 1.2. Lemybrien includes a national school, 2No. service stations, a bar/ diner, a supermarket and a GAA club. There are a number of small housing estates on both sides of the N25 within the settlement.
- 1.3. The subject site, 2.1Ha, is an irregular shape located to the west of the village and the N25. It is positioned along the Regional Road, R676, opposite existing housing within the village.
- 1.4. River Deehill (hydrologically linked to the River Tay) is to the west of the site and this river borders a small portion of the site. There is a bungalow jutting into the site at the southern extremity.
- 1.5. The site is covered in hardcore, unsightly and includes a derelict portacabin. The roadside boundary is a mature hedge.

## 2.0 Proposed Development

- 2.1. The proposed development includes for 16No. detached dwellings and 3No. serviced sites (0.38acre x 3).

- 3 Bed Bungalow (x3)
- 2 Bed Bungalow (x2)
- 4 Bed 1.5 storey (x3)
- 4 Bed two storey (x5)

The house design is contemporary with the gable end creating the front elevation, and the dwellings are mainly four bedroom units. 17% of the site area is devoted to amenity space.

- 2.2. The layout includes the detached dwellings on both sides of a central open space/ play area, with the 3No. serviced sites located at the northern portion of the site.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Waterford City and County Council REFUSED the proposed development for 2No. reasons:

1. The site is not serviced by an adequate water supply or wastewater network to accommodate the proposed development, and in the absence of a firm proposal for the upgrade to same the proposed development is deemed premature.
2. The proposed development is deemed contrary to the provisions of the County Development Plan with regard to R3 Residential Phased zoning policy as the applicant has not demonstrated there is a proven availability and capacity for water services.

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

The first report requested Further Information:

- Pre-connection agreement with Irish Water submitted and Pumping Station to be taken in charge by Irish Water; However the PA was not satisfied with the response, and the release of phased lands cannot be permitted until it is clearly demonstrated the proposal can be serviced by public water and wastewater connections.
- There are adequate services in the village to cater for the proposed development.
- Revised layout to include dwellings facing onto the R676 is acceptable.
- A pedestrian crossing should be provided from the scheme across the Regional road

- Boundary treatment

Following a request for Clarification of Further Information, a recommendation to refuse was forwarded because Irish Water have not confirmed if the necessary water and wastewater infrastructure is or will be in place to serve the development. The planning authority would be granting planning permission for a residential development for which there is no water supply, and this is not satisfactory.

**Roads:** No objection

### 3.2.2. **Other Technical Reports**

#### ***Irish Water:***

Further studies are required to confirm the available capacity of potable public water and public sewage treatment with necessary upgrades.

The PA Later stated it required a formal arrangement that Irish Water would take in charge the proposed pumping station, and it was not to be left the responsibility of the future residents. The response from Irish Water received at the PA on 17<sup>th</sup> of January 2020 stated, There are considerable costs involved with the proposed development in excess of €200,000 plus VAT, and the development has not been granted planning permission, therefore, the costs are only associated with speculative works. As such a documentary evidence from Irish Water will not be forthcoming at this time.

#### ***Fisheries Board***

Lemybrien WWTP has a design capacity of 120, and is treating a population of 150. The current population of the village is 192, and the service stations are not included in this figure. The WWTP is overloaded, and there is no additional capacity to cater for the proposed development.

### 3.3. **Prescribed Bodies**

None

### 3.4. **Third Party Observations**

None

## 4.0 Planning History

### PD04/1971

Planning permission granted for 7No. detached dwellings and 15No. detached bungalows on 15/09/2005. There was a three-year extension to the permission granted under planning reference PD10/311 up until 11/09/2013. The groundworks and the road bases were in place, and some of the house foundations were laid. The site was left abandoned and is now overgrown.

## 5.0 Policy Context

### 5.1. Development Plan

#### Waterford County Development Plan 2011

In Volume 1 of the County Development Plan in Table 4.2 County Settlement Strategy, Lemybrien is a designated Settlement Node.

#### 4.4.5 Settlement Nodes

Settlement Nodes are the lowest tier of the Settlement Strategy. These have a limited service base and are to a large extent founded on the local primary school catchment. These nodes provide opportunities for future expansion/ provision of services such as a local shop. Development growth should be low density relative to the scale of the settlement, located as near as possible to the core area.

The subject site is zoned **R3 Residential Phased**, reserved for future sustainable residential development 2017-2023. The development shall be subject to the availability and capacity of waste and water services, and where R1 and R2 lands have been developed/ committed to development by way of a grant of permission.

DO6 The lands at this location are reserved for future sustainable residential development.

## 5.2. Natural Heritage Designations

Comeragh Mountains SAC Site Code 001952 is 6Km west of the site

Mid-Waterford Coast SPA, Site Code 004193 is 5Km east of the site

## 5.3. EIA Screening

Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, the absence of any connectivity to any sensitive 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 and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The planning authority has no objections to the development in principle with exception to the issue of the water supply, wastewater capacity. The applicant understands that there will be additional costs associated with the upgrading the water and wastewater network and is prepared to meet reasonable costs.

The applicant is prepared to work in conjunction with Irish Water on providing capacity for the development prior to any works taking place if this is a grant of permission.

It is Waterford City and County Council's settlement strategy to encourage living within existing developments. If the development is not granted, Lemybrien cannot play its role in meeting the housing needs of the County as there is no alternative planned for the area.

The development is on a brownfield site which previously had the benefit of planning with connections to the water and waste-water mains system. The capacity has not been taken up by any alternative developments.

The proposed housing will benefit the community.

## 6.2. **Planning Authority Response**

Nothing further to add to the planning report.

## 7.0 **Assessment**

7.1 Having considered the appeal file and inspected the site, I consider the relevant planning issues arising can be assessed under the following headings:

- Compliance with Development Plan
- Planning History of Site
- Design and Layout
- Services
- Traffic
- Appropriate Assessment

### 7.2 ***Compliance with Development Plan***

Chapter 4 of the Waterford County Development Plan 2011-2017 includes the County Settlement Strategy, which is in line with the objectives of the Regional Planning Guidelines 2010. The fundamental objective of the County Settlement Strategy is to encourage population growth in the settlements throughout Co. Waterford. There are 39No. settlements identified in the development plan, and these settlements are, or can be serviced, including Lemybrien village, which is designated as per Table 4.2 as a **Settlement Node**. The Settlement Nodes are the lowest tier of the settlement strategy, and development growth is targeted at low density developments relative to the scale of the settlement and located close to the core area.

The subject site is included in the development boundary for Lemybrien, and it is zoned R3 which states '*Reserved for Future Sustainable Residential Development 2017-2023*'.

7.3 The proposed development complies with the provisions of the development policy. The proposal is a low-density development in close proximity to the village core, and the scale of the development is in keeping with the scale of existing residential

developments in Lemybrien village. The proposal appears as a natural progression of the village footprint, as it is located opposite the existing built up area, and includes detached dwellings of a similar scale to the housing in the village.

7.4 Overall the proposed development is in compliance with development plan policy and is acceptable in principle.

#### 7.5 **Planning History of the Site**

In my opinion the site is a brownfield site. The site had the benefit of planning permission for 22No. dwellings which expired in 2013 under planning reference **PD04/1971**, (later extended). The site works were commenced and were advanced, and the site was abandoned. The site development works carried out included road bases, services, and some of the foundations for a number of the permitted dwellings.

The aerial view of the site reveals remnants of the former site development works. I noted the hardcore and a derelict portacabin on site during my inspection.

The Board should be aware that the planning authority granted planning permission for the residential development on the site under reference PD04/1971, with the same infrastructure currently serving the village. There have been no additional housing estates granted or constructed since PD04/1971 was permitted.

The current proposal represents a reduced density to the previously permitted scheme on the site. The current design and layout intends reusing the existing concrete footprint previously constructed on the site. In my opinion, this is a sustainable form of development.

#### 7.6 **Design and Layout**

The overall layout is a simple uncomplicated layout involving a cul de sac serving the 3No. sites, and the loop service road with the 16No. dwellings fronting onto it in three separate sections. There is a public amenity area overlooked by all of the dwellings which is located in the centre of the large loop. There is a high level of amenity associated with the scheme. Each dwelling is detached with good sized curtilages and ample parking. There are a variety of house types although I would



acknowledge the scheme will cater for family homes. There is a national school and a GAA club in the village that will cater for the future residents.

The house designs are modern with a simple render finish and natural stone detailing. The elevations are gable fronted dwellings, ranging from 3 to 4-bedroom units. The boundary treatment proposals are acceptable, with 2m post and railing fencing between dwellings and a 2metres rear boundary wall.

## 7.7 Services

This issue is the crux of the appeal whereby the proposed development was refused planning permission due to the lack of public water and sewage treatment infrastructure to serve the development. I note the local Fisheries Board made an observation at the planning application stage expressing its concern about the lack of sewage treatment in the village. In this assessment I refer to the submissions made by Irish Water the relevant governing body on this issue.

### ***Irish Water submission (31<sup>st</sup> of July 2019)***

It is necessary for the applicant to carry out further detailed studies to confirm the available capacity of potable water and wastewater treatment prior to agreeing the proposed connection. In the event the applicant wishes to have the studies carried out by Irish Water, a Project Services Agreement will be required. Irish Water will require a contribution towards the costs of upgrades required, if needed.

Following on from the submission, the planning authority requested further information. Irish Water reviewed the further information and stated the applicants had engaged with them regarding the proposal. There were hydrological assessments carried out and certain yield tests carried. The water services upgrade requires upsizing 380m of a 50mm diameter potable water network to 75mm diameter network. The applicant would have to contribute towards such an upgrade to be carried out by Irish Water.

There are further studies required regarding the wastewater treatment network, and the applicant is required to enter a Project Works Services Agreement with Irish Water. There is concern expressed by the planning authority regarding the taking in charge of the proposed pumping station. On the 28<sup>th</sup> of November 2020, the planning authority went back to the applicants requesting confirmation that Irish

Water can service the development, because the response to the further information from the applicants on this issue was not considered to be acceptable. The applicants were advised that in the absence of a Connection Agreement with Irish Water, the proposal could be considered premature. The planning authority advised the applicant the onus is on the applicant to clearly demonstrate that there is proven availability and capacity for water services, and that Irish Water will take in charge the proposed pumping station.

***Applicant's Submission (17<sup>th</sup> of January 2020)***

Irish Water would need to tender a study for the yield capacity for the area, and there is a requirement to upgrade the existing pipe network for 380metres, and again this would require tender under the procurement process. The estimate costs were in the region of €200,000 plus VAT. Due to the proposal been at planning application stage, the proposed upgrading works and costs are considered to be speculative by Irish Water, therefore documentary evidence from Irish Water was not forthcoming. In my opinion, it is the responsibility of the governing body, Irish Water, and not the applicants or planning authority to determine the adequacy of the water and wastewater infrastructure, and the nature of the upgrades required to service the proposed development. From the submission received, Irish Water has not indicated that the necessary services cannot be provided and are willing to tender out the assessment and yield tests, in addition to tendering out any upgrading of the services if required. Irish Water recommended a condition of the permission that the applicants will be make a contribution towards the costs of testing and upgrading the water and wastewater infrastructure serving the site. It is unlikely that Irish Water would upgrade the existing water and sewage infrastructure in Lemybrien without the benefit of a grant of permission for additional houses in the village and the benefit of a contribution towards the expenditure of costs to be incurred.

Therefore, in opinion to refuse the proposed development on the basis the planning authority refused the proposal, i.e. prematurity until water and sewage facilities are provided, will stall and stagnant the sustainable growth of the village. A grant of permission for 16No. dwellings and 3No. sites in the permission, will determine the design brief and the testing parameters for the upgrading works required by Irish Water. I recommend that Board overturn the two reasons for refusal by Waterford County Council, and grant permission that the developers liaise with Irish Water to

assess the necessary upgrade works required to provide both services, and to make a contribution towards the cost incurred by Irish Water for the upgrade works, and agree future maintenance or taking in charge of the proposed pumping station if required.

## **7.8 Traffic**

It is proposed to construct a new entrance off the Regional Road into the proposed development. The sightlines in both directions at the proposed entrance are acceptable. The entrance was permitted previously under planning reference PD04/1971.

The Roads Department did specify that provision should be made for a future pedestrian crossing to facilitate access to the village and the bus stop area. The location of the pedestrian crossing and specification should be agreed with the planning authority.

## **7.9 Appropriate Assessment**

The subject site is within a village setting against to River Deehill which is hydrologically linked to the River Tay which exits to the sea at Stradbally, Co. Waterford. The River Suir is more than 30Km away from the River Deehill that borders the site. The site has no ecological protection status.

The habitat of the subject site is mainly amenity grassland with areas of scrub, and hard surfacing. It is of low ecological value. There is no direct hydrological linkage from the development site to the River Suir SAC.

Having regard to the nature and scale of the proposed development, the availability of public services, the nature of the receiving environment, and the significant distance from any European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## 8.0 Recommendation

- 8.1. Having inspected the site, considered the appeal file, I recommend that the Board grant planning permission for the proposed development

## 9.0 Reasons and Considerations

Having regard to the provisions of the Waterford County Development Plan 2011-2017 (as varied) whereby Lemybrien is a designated Settlement Node with the Settlement Strategy for the county, the R3 Residential Phased zoning of the site, to the planning history of the site, to the location of the site in an established village and to the nature, form, scale, density and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application submitted on the 29<sup>th</sup> of May 2019 and as amended by the further plans and particulars submitted to the Board on 22<sup>nd</sup> of October 2019 and 17<sup>th</sup> of January 2020 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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
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2.	<p>The permission is for 16No. detached dwelling houses and 3No. serviced sites.</p> <p><b>Reason:</b> In the interests of residential amenity.</p>
3.	<p>Prior to the commencement of development, the developer shall provide, for the written agreement of the planning authority, full details of the proposed external design/ finishes in the form of samples and on-site mock-ups. These details shall include photomontages, colours, textures and specifications.</p> <p><b>Reason:</b> In the interests of visual amenity</p>
4.	<p>The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, shall be in accordance with the detailed standards of the Planning Authority for such works.</p> <p><b>Reason:</b> In the interest of amenity and of traffic and pedestrian safety.</p>
5.	<p>Footpaths shall be dished at road junctions in accordance with the requirements of the Planning Authority. Details of the locations and materials to be used in such dishing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason :</b> In the interest of pedestrian safety</p>
6.	<p>Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, 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 dwelling unit.</p> <p><b>Reason:</b> In the interests of amenity and public safety</p>
7.	<p>Prior to the commencement of the development, the developer shall consult and agree in writing, details regarding the location, specification</p>

	<p>and provision of a pedestrian crossing from the site into the village across the Regional Road fronting the site.</p> <p><b>Reason:</b> In the interests of pedestrian linkages and safety</p>
8.	<p>Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.</p> <p><b>Reason:</b> In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.</p>
9.	<p>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. Full details of all surface water disposal, surface water management and all necessary legal entitlements to carry out works to adequately service the proposed development shall be agreed in writing with the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of public health.</p>
10.	<p>Prior to the commencement of the development the applicant shall consult and agree in writing with Irish Water the following:</p> <ol style="list-style-type: none"> <li>a) The required investigative testing of the existing water supply and sewage treatment infrastructure to cater for the proposed development;</li> <li>b) Proposals for necessary upgrading measures to water supply and sewage treatment infrastructure to cater for the proposed development;</li> </ol>

	<p>c) The financial contribution towards the costs of testing and upgrading works to be carried out by Irish Water to facilitate the proposed development,</p> <p>d) The maintenance or taking in charge of the sewage treatment infrastructure by Irish Water.</p> <p><b>Reason:</b> In the interest of public health</p>
11.	<p>To ensure full implementation of the proposed landscape plan, the developer is required to retain the services of a Landscape Consultant throughout the life of the site development works. A completion certificate shall be signed off by the Landscape Consultant when all works are completed and in line with the submitted landscape drawings. This completion certificate shall be submitted to the planning authority for written agreement upon completion of works.</p> <p><b>Reason:</b> In the interest of amenity.</p>
12.	<p>Vegetation clearance and any necessary tree removal shall take place outside the bird breeding season (March 1st – August 31st).</p> <p><b>Reason:</b> To protect birds and bird breeding habitats during the nesting season.</p>
13.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between the hours of 0800 to 1400 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.</p> <p><b>Reason:</b> In order to safeguard the amenities of property in the vicinity</p>
14.	<p>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</p>

	<p>practice for the development, noise management measures and off-site disposal of construction/demolition waste.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
15.	<p>All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p><b>Reason:</b> To protect the amenities of the area.</p>
16.	<p>(a) All areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.</p> <p>(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.</p> <p><b>Reason:</b> To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
17.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.</p> <p><b>Reason:</b> In the interest of orderly development and the visual amenities of the area.</p>
18.	<p>All of the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of further electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>



	<b>Reason:</b> In the interest of sustainable transportation.
19.	<p>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.</p> <p><b>Reason:</b> 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.</p>
20.	<p>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 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 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.</p> <p><b>Reason:</b> To ensure the satisfactory completion of the development.</p>
21.	<p>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</p>

<p>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.</p> <p><b>Reason:</b> 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</p>
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Caryn Coogan

Planning Inspector

23/07/2020