



An
Bord
Pleanála

Inspector's Report ABP-308509-20

Development	Permission for the removal of rising walls and foundations of seven houses and the construction of ten semi-detached houses and associated site works.
Location	Beechview, Ard na Sidhe, Clonmel, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	20/892
Applicant(s)	Joe & Edel Mulcahy
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party(s) V Grant
Appellant(s)	Michael Butler
Observer(s)	None received.
Date of Site Inspection	21st January 2021
Inspector	Fergal O'Bric

1.0 Site Location and Description

- 1.1. Clonmel is a town in south-east Tipperary, located approximately 20 kilometres west of Carrick-on Suir and approximately 43 kilometres south-east of Tipperary town. The town is located north of the Knockmealdown mountain range. The appeal site is located to the north-west of the town and is accessed via an internal access road, Beechview cul-de-sac, within the Ard na Sidhe residential development, which in turn is accessed off a regional road, the R688, linking Clonmel with Cashel, within the 50 km/h speed control zone.
- 1.2. The appeal site has a stated area of 0.25 hectares and is located approximately 1.5 kilometres north-west of the town centre. The appeal site is located within the north-eastern part of the residential development, and comprises the foundations and butt rising walls of seven houses within an area that is fenced off and inaccessible from the remainder of the residential development, which is substantially complete, in that one hundred and four dwellings are constructed, and the majority are occupied.
- 1.3. To the south, south-west and west are two-storey detached, semi-detached and terraced dwellings within the Ard na Sidhe development. Directly opposite the appeal site on the other side of the internal service road area numbers 26-32 and the gable end of number 25 Ard na Sidhe. North of the appeal site is another residential development, Glencarra. Immediately west of the appeal site (outside of the site boundary) is an area of undeveloped open space. Site levels rise gradually from south to north on the appeal site and rise significantly further north of the site towards the Glencarra residential development.

2.0 Proposed Development

- 2.1. The development proposal would comprise:

The removal of rising walls and foundations of seven houses and the construction of ten two-storey semi-detached dwellings, the development would connect into existing on-site water services and associated site works.
- 2.2. The dwellings would have a maximum ridge height of 8.5 metres, and would comprise a mix of two-, three- and four-bedroom units with floor areas ranging from 93.6 square metres (sq. m.) to 131 sq. m. External finishes would comprise a napp

plaster and blue/black flat roof tiles, consistent with the finishes of the neighbouring dwellings.

- 2.3. The layout would be consistent with that previously permitted by the Planning Authority and the Board, within this part of the development opposite a row of semi-detached dwellings and east of an area of public open space area, of approximately 500 sq. m. There is another landscaped area of open space further south-east within the overall Ard na Sidhe development. The existing watermains, foul and surface water sewer network within the development would be utilised.
- 2.4. Access is proposed from the existing internal service road (Beechview) serving the Ard na Sidhe residential development. The development is served by two-metre-wide footpaths and street lighting on the opposite side of the service road. It is proposed to continue the internal footpath and streetlighting along the frontage (south) of the proposed dwellings. On-site car parking spaces would be provided for each of the dwellings.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted planning permission for the development subject to nineteen planning conditions. The following are considered to be the relevant planning conditions:

Condition number 1 Permission is granted as per the plans and particulars as submitted to the Planning Authority on the 12th day of August 2020.

Condition number 2: Part V Agreement with Local Authority.

Condition number 3: Submission of a Construction Traffic Management Plan.

Condition number 5: Developer to enter water and wastewater agreement with Irish Water.

Condition number 18: Development Contributions.

Condition number 19: Insurance bond.

3.2. Planning Authority Reports

3.2.1 The Planner's Report dated the 23rd day of September 2020 sets out the following:

- The principle of residential development is established on this section of the site by virtue of its planning history permitted by the Planning Authority and the Board.
- The site already comprises the foundations and rising walls of seven dwellings.
- Recommended that permission be granted for the ten residential units as submitted, subject to the conditions as summarised in Section 3.1 above.

3.3. **Technical Reports.**

District Engineer: No objection, subject to conditions.

3.4. **Prescribed Bodies**

None received.

3.5. **Third Party Observations**

One third-party submission was received which included similar issues to those raised within the appeal submission.

4.0 **Planning History**

4.1. The following is considered to be the relevant planning history pertaining to the appeal site:

Planning Authority reference number 19/600088. In 2019, planning permission was granted for the completion of the 7 dwellings and all associated site works.

Planning Authority reference number 08/550070. In 2008, planning permission was granted for retention and completion of the bases of the 7 houses and all associated site works.

Planning Authority reference number 08/550036. In 2008, planning permission was refused for an additional dwelling to the seven units permitted under by the Board, under planning reference number PL52.110876.

Planning Authority reference number 105/98. In 1998, planning permission was granted for the construction of 111 houses and all associated site works. This

decision was appealed to An Bord Pleanála, reference number PL52.110876. In 1999, planning permission was granted by the Board for the construction of 113 residential units.

5.0 Policy Context

5.1. Development Plan

5.1.1 Clonmel and Environs Development Plan 2013 (as varied).

Within the Clonmel Plan (as set out within Part 2 of the Development Plan), the site is zoned as residential where the objective is: To preserve and enhance existing residential amenity including avoiding excessive overlooking, reduction in general safety and the reduction in the general usability and security of existing public and private open space.

The following policies and objectives are included within the Plan and pertinent to the current proposals:

Section 6: Residential Development

Policy HSG 2: New Residential Development: It is the policy of the Council to facilitate sustainable residential development on new residentially zoned lands subject to the policies and relevant criteria set out within this Plan being satisfied. Where Part V of the Planning and Development Acts 2000-2013 applies, the application must also be supported by a Development Impact Assessment.

Policy HSG 3 Urban Densities: It is the policy of the Council to encourage a range of densities and housing types and styles having regard to neighbouring developments, the urban form of the town and the objectives of the proper planning and sustainable development in order to provide a balanced pattern of house types throughout the town and within developments.

Section 6.4.2: Mix of House Types

5.2. **Natural Heritage Designations**

None relevant.

5.3. **Environmental Impact Assessment - Preliminary Examination**

Having regard to the limited nature and scale of the proposed development and 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. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 **The Appeal**

6.1. Grounds of Appeal

6.1.1. An Appeal against the decision to grant planning permission has been submitted by John V. Lennon Consultant Engineer, on behalf of Michael Butler. The main issues raised by the appellant may be synopsised as follows:

- That he is the owner of a right of way over the existing surface water sewer and foul water main sewer from the proposed development.
- That the proposals would result in an intensification of development on the lands to the detriment of the sustainability of the area.

6.2. **Applicants Response**

- The applicants are the owners of the appeal site and have submitted a copy of the deed of transfer of the lands to the applicants and a copy of a High Court order signed by the vendors and purchasers. It is stated that this

purchase included a deed of mutual easements which entitles the owners to a right of access to services within the lands.

- The Ard na Sidhe residential development, including the roads and services are within the charge of Tipperary County Council (correspondence confirming same has been submitted).
- Matters raised are based on legal argument with no valid planning grounds raised. Therefore, the appeal should be dismissed in this regard.

6.3. **Planning Authority Response**

- The applicants demonstrated that they had sufficient title to develop the site and connect to the services under Planning Authority reference number 19600088.
- The development is acceptable in terms of density, layout and design.
- The proposals will increase the density within the Ard na Sidhe development from 17.9 units per hectare to 18.3 units per hectare.
- The overall public open space provision within the development is in excess of 20%.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The design and layout are consistent with that previously permitted on the site. The issues raised in the appeal submission can be dealt with under the following headings:

Legal Issues.

Residential Density.

Appropriate Assessment.

7.2. **Legal Issues**

- 7.2.1. Legal documentation has been submitted by the applicants demonstrating that they purchased the appeal site in 2017. It is apparent that this purchase included a deed of mutual easements which it is stated entitles them to a right of access to services.
- 7.2.2. The issue of access to land/services is a civil matter. I note the content of the provisions of Section 34 (13) of the Planning and Development Act 2000 (as amended) which states that: Persons shall not be entitled solely by reason of a permission under this section to carry out any development.
- 7.2.3. In response, the applicants have stated that all works would be carried out on lands within their control. Section 5.13 of the Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about rights over land and that these are ultimately matters for resolution in the Courts. Section 34(13) of the Planning and Development Act 2000 (as amended) states: A person shall not be entitled solely by reason of a permission under this section to carry out any development. I am satisfied that the provisions outlined above give the Board sufficient comfort to permit the completion of this residential development.

7.3 Residential Density

- 7.3.1 In terms of intensification of development, it is noted that the overall density of development within the Ard na Sidhe residential development will increase modestly to 18.3 units per hectare. However, approximately 20% of the site area would remain as public open space, which is considered generous and exceeds Development Plan standards.
- 7.3.2 The proposals would allow for the completion of the residential scheme, and the removal of the security fencing and the completion of the footpaths and streetlighting within the Beechview cul-de-sac. Its removal will also coincide with the completion of construction works within the development, first permitted in 1999. This would result in the betterment of residential amenities for the residents of Ard na Sidhe, in that construction noise, vibration, dust and fumes would be finally removed from their residential development.
- 7.3.4 Therefore, I am satisfied that the density, design and layout would be acceptable and would not adversely impact upon the amenities of neighbouring residential properties.

7.4 Appropriate Assessment

7.5.1 Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually, or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission be granted.

9.0 Reasons and Considerations

Having regard to the location of the site on residentially zoned lands in the Clonmel and Environs Development Plan, and to the policies and objectives and development standards in the Development Plan, it is considered that, subject to compliance with conditions set out below, the proposed development would not adversely impact upon the residential 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 to the Planning Authority on the 12th day of August 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.

Reason: In the interest of clarity.

- 2 The rear (northern) boundary of the site shall comprise the existing hedgerow boundary which shall be retained and strengthened. All other rear garden

boundaries shall be bounded by block walls, 1.8 metres in height, capped, and rendered, on both sides, to the written satisfaction of the planning authority.

Reason: In the interest of residential and visual amenity.

- 3 The internal road network serving the proposed development, including the turning area, 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.

- 4 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

- 5 Proposals for a 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.

Reason: In the interest of urban legibility.

- 6 Water supply and drainage arrangements, including 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 The applicant shall enter into water and waste-water connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

- 8 Site development and building works shall be carried out only between the hours of 0700 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.

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

- 9 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.

- 10 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 the two houses.

Reason: In the interests of amenity and public safety.

- 11 Prior to the 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 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.

Reason: To ensure the satisfactory completion of the development.

- 12 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.

- 13 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.

Fergal Ó Bric
Planning Inspectorate

29th January 2021