



An
Bord
Pleanála

Inspector's Report ABP309070-21

Development	50 houses
Location	Derrinturn, County Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	201166
Applicant(s)	Donnington Property Limited
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party v Refusal
Appellant(s)	Donnington Property Limited
Observer(s)	None
Date of Site Inspection	22 nd February 2022
Inspector	Hugh Mannion

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1.0 Site Location and Description

- 1.1. The application site has a stated area of 2.22ha and is an irregularly shaped site on the eastern side of the R403 which runs through Derrinturn, County Kildare. The site is zoned for residential development and adjoins housing in Newbury Park to the north and housing in Dreenane Park to the southwest. The site is part of a larger landholding which adjoins another housing development at Grace's Park with an indicative road access through that development (but not included in the present application). The proposed development will back onto the existing housing in Dreenane Park but is separated from the Newbury Park housing by a stream, strip of public open space and an access road. This existing access road to Newbury Park is planned to serve the majority of the new housing but 6 units will access Dreenane Park.
- 1.2. Derrinturn is a 'linear' village linked to the M4 at Enfield by the R403 and the R402. There are community facilities (including educational and church uses), two service/fuel retailers and convenience shops in the village.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - 1) 50 houses (14 type A), (21 type B), (11 type C), (2 type D), (1 type E), (1 type F),
 - 2) Site development works including foul and surface water sewers, watermains, roads, footpaths, landscaping, open spaces, boundary treatments,
 - 3) Vehicular and pedestrian access through Newbury Park for units 7 to 50, access through Dreenane Park for units 1-6,
 - 4) All on 2.22ha, Derrinturn, County Kildare.

3.0 Planning Authority Decision

3.1. Decision

Refuse Permission

1. There is a lack of capacity in the Derrinturn WWTP with resulting risk of pollution of the Cushaling river – a tributary of the River Barrow. Additionally, detail of the proposal to raise site levels are unclear and may necessitate the importation of waste soil/stone. Therefore, the proposed development would be prejudicial to public health and give rise to a risk of water pollution.
2. The proposed development would be at a significantly higher elevation than the adjoining houses on Dreenane Park and would give rise to overlooking/overshadowing of those houses in a manner as to seriously injure the amenity of property in the vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report recommended refusal for the reasons set out in the manager's order.

3.2.2. Other Technical Reports

Environment Section report recommended planning permission should not be granted until it is established that there is sufficient capacity in the WWTP.

Environmental Health Officer report recommended a grant of permission subject to conditions.

The **Acting Chief Fire Officer** reported no objection subject to conditions.

Water Services Section recommended refusal because the Derrinturn WWTP was already at a loading of 1702pe with a design capacity of 1600pe.

Transport Department recommended requesting additional information.

Area Engineer requested further information in relation surface water manholes, footpath layouts and relocation of an overhead power line.

4.0 Planning History

- 4.1. Permission was granted on the site under 06/2337 for 31 houses. Subsequently that permission was extended but expired on 13th June 2019.

5.0 Policy and Context

5.1. National Planning Framework

- 5.2. The site is located within the Eastern and Midland Regional Assembly Area identified in the NPF. The NPF projects that around 2.85 million people will live in this region by 2040.

5.3. National Policy Objective 6

- 5.4. *Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.*

5.5. National Policy Objective 11a.

- 5.6. *Support the proportionate growth of and appropriately designed development in rural towns that will contribute to their regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services.*

5.7. National Policy Objective 63.

- 5.8. Ensure the efficient and sustainable use and development of water resources and water services infrastructure in order to manage and conserve water resources in a manner that supports a healthy society, economic development requirements and a cleaner environment.

5.9. Regional Spatial and Economic Strategy

- 5.10. The Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031 is the relevant RSES for Kildare.

5.11. **Wastewater Treatment RPO 10.10:**

5.12. Support Irish Water and the relevant local authorities in the Region to eliminate untreated discharges from settlements in the short term, while planning strategically for long term growth in tandem with Project Ireland 2040 and in increasing compliance with the requirements of the Urban Waste Water Treatment Directive from 39% today to 90% by the end of 2021, to 99% by 2027 and to 100% by 2040.

5.13. **RPO 10.11:** EMRA supports the delivery of the wastewater infrastructure set out in Table 10.2 (the Greater Dublin Drainage Project, The Ringsend Wastewater Treatment Plant Project, The Athlone Main Drainage Project and The Upper Liffey Valley Sewerage Scheme) subject to appropriate environmental assessment and the planning process.

5.14. **RPO 10.12:** Development Plans shall support strategic wastewater treatment infrastructure investment and provide for the separation of foul and surface water networks to accommodate the future growth of the Region.

5.15. **RPO 10.13:** EMRA shall support appropriate options for the extraction of energy and other resources from sewerage sludge in the Region.

5.16. **Development Plan**

5.17. The Kildare County Development Plan 2017-2023 is the relevant County Development Plan for the area.

5.18. Table 3.1 sets out the settlement hierarchy for the county where the hierarchy is;

- Large growth Towns I (Naas),
- large growth towns II (Maynooth, Leixlip and Newbridge),
- Moderate sustainable growth towns (Celbridge/Kilcock, Athy, Kildare, Monasterevin, Kilcullen)
- Small Towns (Clane, Sallins, Kill, Prosperous, Rathangan, Ardgavan, **Derrinturn** and Castledermot).

5.19. **Section 3.4.3 Role of Small Towns Small Towns** within the Hinterland area generally comprise populations of between 1,500 – 5,000. Their role is to develop as key local centres for services with levels of growth to cater for local need at an

appropriate scale and to support local enterprise to cater for local demand. The rate of growth will be controlled to limit pressure on services, the environment and unsustainable commuting patterns. Small Town Plans have been prepared to provide a planning framework for their future development and are detailed in Volume 2, Section 1.

5.20. **In relation to Natura 2000 sites it is a policy of the planning authority to;**

5.21. **NH 4** Support the conservation and enhancement of Natura 2000 Sites including any additional sites that may be proposed for designation during the period of this Plan and to protect the Natura 2000 network from any plans and projects that are likely to have a significant effect on the coherence or integrity of a Natura 2000 Site.

5.22. **NH 5** Prevent development that would adversely affect the integrity of any Natura 2000 site located within and immediately adjacent to the county and promote favourable conservation status of habitats and protected species including those listed under the Birds Directive, the Wildlife Acts and the Habitats Directive.

5.23. **NH 6** Ensure an Appropriate Assessment, in accordance with Article 6(3) and Article 6(4) of the Habitats Directive and with DEHLG guidance (2009), is carried out in respect of any plan or project not directly connected with or necessary to the management of a Natura 2000 site to determine the likelihood of the plan or project having a significant effect on a Natura 2000 site, either individually or in combination with other plans or projects and to ensure that projects which may give rise to significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites will not be permitted (either individually or in combination with other plans or projects) unless for reasons of overriding public interest.

5.24. **In relation to Inland Waterways the plan includes objective GI 22 –**

5.25. Require that runoff from a developed area will not result in deterioration of downstream watercourses or habitats, and that pollution generated by a development is treated within the development area prior to discharge to local watercourses.

5.26. **Local Area Plan**

The site is zoned for development in the land use zoning map attached to the Derrinturn LAP.

5.27. Natural Heritage Designations

The proposed development will not impact on a NHA.

5.28. EIA Screening

5.29. Article 10(a)(b)(i) of Schedule 5 of the Planning and Development Regulations 2001, as amended, provides that 500 dwelling units trigger the requirement for submission of an EIAR and carrying out of an EIA. The present application is below that threshold and therefore submission of an EIAR is not mandatory. However, since the application falls into a class specified in the Regulations it is necessary to screen the proposal having regard to the criteria set out in Schedule 7 of the Regulations which are:

1. the characteristics of the proposed development,
2. the location of the proposed development, and
3. the types and characteristics of potential impacts.

5.30. In relation to the characteristics the size of the proposed development falls well below the threshold provided for in Schedule 5. The proposed development is not part of another development, does not give rise to demolition works, excessive use of natural resources, and will not give rise to significant waste products. There are no risks of major accidents or risks to human health. There is a risk of water pollution discussed in the AA screening exercise below.

5.31. The location of the proposed development on grazing/pastureland is not unusually sensitive or uncommon. It is not proximate to wetlands, riparian areas, river mouths, coastal zones or the marine environment, mountain and forest areas, nature reserves or parks. The site is not one of historical, cultural or archaeological significance. There is foreseeable possibility of impact on areas designated under the Habitats Directive as discussed below.

5.32. The characteristics of potential impacts are not likely to be spatially large or significant for human populations, transboundary in nature, complex or irreversible. There is a reasonable prospect of mitigating/reducing impacts on water quality.

5.33. Having regard to the foregoing I do not recommend that submission of an EIAR and carrying out of EIA is required.

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed development would not be premature once Irish Water carryout planned up-grade works to the Derrinturn WWTP.
- The applicant would accept a condition requiring payment for the works to the WWTP.
- The proposed development does not require the importation of soil/sand into the site.
- The proposed development would not overshadow adjoining property.
- The site is zoned for residential development for which there is significant demand.

6.2. Planning Authority Response

- The Board should have regard to the lack of capacity in the Derrinturn WWTP.
- The application does not include importation of fill material.
- The Board should up-hold the planning authority's decision.

6.3. Observations

- The Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media made a submission to the Board that the proposed development had the capacity to impact on water quality in the Cushing River. If permission is to be granted an AA screening should be carried out and submitted to the Department.

6.4. Further Responses

None.

7.0 Assessment

7.1. Planning Policy

7.2. Capacity in the WWTP

- 7.3. The Derrinturn Small Town Plan is included in volume 2 of the current County Development Plan. In relation to wastewater services the plan states ‘Derrinturn’s new wastewater treatment plant was completed in 2009 and provides for a population equivalent of 1,600pe. This is sufficient to cater for the current population but may need to be addressed in order to facilitate further residential growth. The level of growth in Derrinturn will be managed in line with the ability of local services to cater for future growth. No development will be permitted to proceed if the local services are not sufficient to cater for the development’. Objective DT16 is ‘to facilitate the upgrade of the Derrinturn Wastewater Treatment Plant if necessary to cater for further development in the town’. Objective DT16 seeks ‘to ensure the changeover from septic tanks to mains connections in all cases where this is feasible and to require all new developments in Derrinturn to connect to the existing wastewater infrastructure where appropriate’.
- 7.4. The Derrinturn WWTP is located to the southwest of the application site on the opposite side of the R403 sharing an access with a small housing estate (Ballyshannon Manor). The planning authority refused permission for lack of capacity in the Derrinturn WWTP with resulting risk of pollution of the Cushaling river – a tributary of the River Barrow. The applicant appealed this point making the case that in preapplication discussions with Irish Water that company noted that there were two constraints on draining the proposed development to the Derrinturn WWTP. The development would require a new 50m sewer connection and a capacity upgrade to the WWTP. However, the proposed connection could be facilitated at that time (2020). The appeal states that references in the planning authority’s files that Irish Water recommends refusal for lack of capacity in the WWTP are incorrect.
- 7.5. In correspondence with the applicant (dates 6th July 2020) Irish Water states that “Derrinturn WWTP upgrade and approximately 50m of network extension will be required for the connection. Irish Water currently does not have any plans to extend or commence upgrade works to its infrastructure in this area. Should you wish to progress with the connection, you have to fund the works. At connection application

stage the upgrade will be reviewed, and the works fee will be calculated in the connection offer fee or in a separate upgrade project agreement”.

- 7.6. The appeal makes the case that the letter dated 30th November 2020 from Irish Water but received by Kildare Co Co on 1st December 2020 was not considered by the planning authority and in fact supports a grant of permission. This letter (see copy on file tabbed ‘X’) states that the WWTP is at capacity, requires process optimisation works to bring it up to capacity and such works are not currently in the capital programme for Irish Water. Additionally, if the applicant wishes to progress project the applicant will have to fund the works. I do not agree with the grounds of appeal that these statements unambiguously support a grant of planning permission.
- 7.7. The Irish Water Investment Plan 2020 to 2024 Appendix 3 lists the wastewater projects and programmes that are expected to be either commenced, progressed or completed during the 2020-2024 period. There are 17 projects listed for Kildare but there are none for the Derrinturn WWTP. There is an Irish Water annual environmental report for 2019 available for the WWTP which states that for the period under review the plant complied with its emission limit values set out in its wastewater discharge licence. Additionally, a deterioration in the water quality in the Cushaling stream has been identified but it is not known if this deterioration in water quality results from the discharge from the WWTP. The Water Framework Directive status of the Cushaling upstream and downstream from the outfall is recorded as poor by Irish Water in its report. A further report (a Small Stream Risk Score (SSRS)) assessment of the Cushaling stream prepared for the planning authority and dated October 2019 reported that water quality above and below the WWTP outfall was ‘at risk’ and poorer downstream than up stream.
- 7.8. The target of any discharge arising from the WWTP is surface water in the Cushaling stream and any water bodies downstream from the outfall point. Article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations 2009 requires that a public authority (the Board is included in this definition) shall not, in the performance of its functions, undertake those functions in a manner that knowingly causes or allows deterioration in the chemical status or ecological status (or ecological potential as the case may be) of a body of surface water. The planning authority’s engineering advice is that there is no extra capacity in the WWTP to accommodate the proposed development. The Irish Water letter to Kildare County

Council received after the decision to refuse permission does not confirm the applicant's case that it recommends a grant of permission but makes the point that if upgrade works were carried out the capacity deficit in the WWTP would be resolved and that works to facilitate the proposed development should be paid for by the applicant.

7.9. On the basis of the foregoing, I conclude that:

- there is no capacity in the WWTP to treat the effluent arising from the proposed development,
- the proposed development would give rise to a risk of pollution in the Cushaling stream,
- an expansion of the WWTP should be designed having regard to the land use zoning objectives for the village set out in the Derrinturn land use zoning objectives map included in the volume 2 of the County Development Plan,
- provision should be made for the connection of existing development within the town boundary shown on the Derrinturn land use zoning objectives map but which is currently served by domestic wastewater treatment systems in order to achieve objective DT16 in the village plan which seeks to ensure the changeover from septic tanks to mains connections.

7.10. I recommend refusal for lack of foul water treatment capacity.

7.11. **Soil Importation/Infill.**

7.12. The planning authority stated that the site levels would require to be raised. The applicant states in the grounds of appeal that the difference between existing ground levels and proposed FFLs will not require the importation of soil or stone. The planning authority in its response to the appeal concedes that the importation of soil is not part of the application.

7.13. I am satisfied that this application does not include importation of soil/waste.

7.14. Impacts on amenity.

7.15. The planning authority is concerned that proposed units 6 to 25 that back onto a line of gable fronted bungalows in Dreenane Park will overlook and overshadow the existing houses.

7.16. In relation to overshadowing it may be noted that the proposed houses are located northwest of the existing houses in Dreenane Park and cannot overshadow these houses.

7.17. In relation to overlooking it is a rule of thumb is that first floor opposing rear windows should be 22m metres apart which is sufficient to protect residential amenity from unreasonable overlooking. The Sustainable Development in Urban Areas Guidelines make the point that in innovative layouts tighter separation distances can be acceptable. The present case is not an innovative layout but the proposed separation distance between the first-floor windows and the rear elevations of the houses on Dreenane Park is 24.25m. The planning authority makes the case that the difference in site levels reduces the utility of the separation distance from the perspective of preventing overlooking. The difference in finished floor levels is 1.3m which is not sufficient over a distance of 24m to seriously injure the amenity of the existing houses by reason of overlooking and I conclude that the proposed development will not seriously injure the amenity of houses in Dreenane Park.

7.18. Appropriate Assessment Screening

7.19. The application did not include an AA screening report. The planning authority conducted a screening exercise and concluded that there were no potential significant effects arising from the proposed development on any European site and that submission of an NIS and carrying out of an AA is not required.

7.20. The Derrinturn WWTP first discharges to the Ballyshannon River and this watercourse has a confluence with the Cushaling River after it passes under the Grand Canal to the south of Derrinturn. The Cushaling is within the Figile sub-catchment which is within the wider Barrow catchment. Therefore, the Cushaling River is a tributary of the Barrow which is part of the River Barrow and River Nore SAC (002162). The qualifying interests of the SAC are:

1. Desmoulin's whorl snail *Vertigo moulinsiana*

2. Freshwater pearl mussel *Margaritifera margaritifera*
3. White-clawed crayfish *Austropotamobius pallipes*
4. Sea lamprey *Petromyzon marinus*
5. Brook lamprey *Lampetra planeri*
6. River lamprey *Lampetra fluviatilis*
7. Twaite shad *Alosa fallax*
8. Atlantic salmon (*Salmo salar*) (only in fresh water)
9. Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide
10. Salicornia and other annuals colonizing mud and sand
11. Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
12. Otter *Lutra lutra*
13. Mediterranean salt meadows (*Juncetalia maritimi*)
14. Killarney fern *Trichomanes speciosum*
15. Nore freshwater pearl mussel *Margaritifera durrovensis*
16. Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
17. European dry heaths
18. Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
19. Petrifying springs with tufa formation (*Cratoneurion*)
20. Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
21. Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)

7.21. The conservation objectives for the SAC are the maintenance of habitats and species within Natura 2000 sites at favourable conservation condition which will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level. Several of these species and habitats for which the SAC has been designated are water dependent. The application has not

established that the foul water arising from the proposed development would not contribute to a deterioration in the overall water quality in the SAC and the proposed development would, therefore, undermine the objectives of the Habitats Directive.

- 7.22. Furthermore, it is not clear that all the surface water arising within the site is being disposed of on site. There is a stream or ditch within the site along the fence between the public open space in Newbury Park which appears to be culverted as it passes out of Newbury Park, and I consider it very likely that it drains into the Ballyshannon River on the other side of the R403. It is unclear if contaminants can escape the site and into the Ballyshannon River, then to the Cushaling River and thereby into the catchment of the SAC. It is an objective of the planning authority (objective GI22 section 13.10.2 of the County Development Plan) that runoff from a developed area will not result in deterioration of downstream watercourses or habitats, and that pollution generated by a development is treated within the development area prior to discharge to local watercourses.
- 7.23. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the River Barrow and River Nore SAC (002162) in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

8.0 Recommendation

- 8.1. I recommend refusal of permission.

9.0 Reasons and Considerations

1. Article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations 2009, as amended, requires that a public authority shall not, in the performance of its functions, undertake those functions in a manner that knowingly causes or allows deterioration in the chemical status or ecological status (or ecological potential as the case may be) of a body of surface water. The Derrinturn public wastewater treatment plant is overloaded, and water quality in the Cushaling River has been compromised. The proposed development would lead to further overloading of the wastewater treatment plant and, therefore, the Board is precluded under Article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations 2009, as amended, from granting permission and the proposed development would be premature by reference to an existing deficiency in the provision of sewerage facilities and would be contrary to the proper planning and development of the area.
2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the River Barrow and River Nore SAC (002162), or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

Hugh Mannion
Senior Planning Inspector

23rd February 2021