



An
Bord
Pleanála

Inspector's Report ABP309081-21

Development	Construct 93 Houses (amendment to permitted development under PL27.248401).
Location	Richview House, Bellevue Hill, Delgany, Co Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	20545.
Applicant(s)	Gorteen Way Limited
Type of Application	Permission
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellant(s)	Aidan Kelly
Observer(s)	None.
Date of Site Inspection	4 th March 2022
Inspector	Hugh Mannion

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1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 4.28ha and is located northwest of Delgany village, County Wicklow. The site is accessed from Bellevue Hill Road, which is a public road that runs north/south and has a junction with the R762 to the south of the site in Delgany village centre. A pedestrian link to Convent Road to the east is proposed. The site includes an existing two-storey dwelling 'Richview House' which is vacant and in poor condition. The preparatory works for the development permitted under PL27.248401 have commenced on site. There is a construction entrance off Bellevue Hill and staff offices/services are located along this boundary in the west of the site. This current construction entrance will be closed up and a new entrance close to an existing gate lodge serve the new development at the southwestern end of the site along Bellevue Hill Road. The site generally slopes down southeast (from Bellevue Hill Road) towards the coast.
- 1.2. To the south of the site are the lands of the former Carmelite Convent to which pedestrian/cyclist access is proposed from this site. On the northern boundary is Brooklands (the current appellant's property). Further along the northern boundary to the east is another house 'Menapia'.

2.0 Proposed Development

- 2.1. The proposed development comprises development of a site is about 4.28ha previously granted permission for 89 houses under PL27.248401 at Richview House, Bellevue Hill, Delgany, County Wicklow. The proposed development comprises:
 - A. An amendment to the layout of 36 previously permitted houses (number 19 to 34 inclusive, 54 to 60 inclusive, 72 to 80 inclusive) and for the construction of 10 additional houses. The amended development will comprise 92 single, two and three storey houses, (5 four-bedroom detached houses, 14 four-bedroom semi-detached houses, 44 three-bedroom semidetached houses, 28 three-bedroom terraced houses, 1 two bed terraced house. This revision provides for the omission of previously approved house types A, B, E and F and inclusion of new house types J1, M1 and N.

- B. The position of previously permitted houses 43 to 53 inclusive are to be moved south. The alignment of the internal estate road and public open space in front of these houses to be amended accordingly.
- C. The position of the previously permitted northern site boundary wall and fencing is proposed to be moved.
- D. The proposed alterations to the previously amended house type H (previously permitted houses 47,48 and 49). The two number type H end of terrace three bed houses are to be reduced in gross floor area from 103.8m² to 101.7m².
- E. The previously permitted 3m high boundary wall with convent land on the southeast site boundary is to be reduced in height to provide a 1.8m high capped and rendered block wall,
- F. A 10m² extension to the rear of the previously permitted creche to give a new gross floor area of 154m² with an increased childcare capacity from 23 to 25 children.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. Grant permission for 93 houses (the further information submitted 8th October 2020 increased the proposed number of houses to 93) with conditions.
- 3.3. Condition 1 referred to the further information submitted on the 8th October 2020 and 10th November 2020.
- 3.4. Condition 4(b) limited the lifetime of the permission to that of the 'parent permission' under PL27.24840 (that permission is dated 9th October 2017)

3.5. Planning Authority Reports

3.5.1. Planning Reports

The initial planner's report recommended requesting additional information. The planning authority requested additional information in relation to the:

1. Mix of unit types - specifically is there enough smaller two bed units proposed.

2. The application proposes an amendment to the northern site boundary. Condition 10(1)(d) of PL27.248401 required proposed roads 6 and 7 to extend to the site boundary. Revised plans providing for this should be submitted.
 3. The application proposes to reduce the permitted wall along the Carmelite convent lands to the southeast from 3m to 1.8m. Plans illustrating the amended wall and future access to the convent lands should be submitted.
 4. Revised plans illustrating relationship/impact on the house 'Menapia' to the northeast should be submitted.
- 3.6. Subsequent to the submission the planning authority was satisfied with the mix of unit types and a final figure of 93 units.
 - 3.7. The planning authority was dissatisfied with the line of the northern boundary and the future road links to the lands to the north of the site (Broadlands) and requested clarification of further information (CFI). The applicants responded to the CFI request by extending the redline site boundary to be co-terminus with the blue ownership boundary and attached a solicitor's letter confirming ownership of the land.
 - 3.8. The planning authority was satisfied with the amended wall heights adjoining the Carmelite convent lands but not with the gate/link through and sought a shared pedestrian/cyclist link through by way of CFI. The applicants responded to the CFI with proposals to create a pedestrian/cyclist link through to the convent lands and this was acceptable to the planning authority.
 - 3.9. The shadow analysis of the impact on 'Menapia' is satisfactory and the impact is acceptable.
 - 3.10. Other Technical Reports
 - 3.11. **Roads Department** requested provision of a shared cycle/pedestrian connection Carmelite convent lands and covered bike parking for terraced units.
 - 3.12. **Housing Department** confirmed that discussions between the developer and the Council are on-going.

4.0 Planning History

- 4.1. Permission was granted under **PL27.248401** for development on the current site for 89 houses, removal of stables, outbuildings and partial removal and change of use of house to crèche, ESB substation, car parking, vehicular and pedestrian entrances at Richview House, Bellevue Hill, Delgany, Co. Wicklow.
- 4.2. Permission was granted under **ABP308467-20** (an SHD case) for development comprising of 232 residential units (96 houses 136 apartments). The proposed dwelling houses comprise a combination of detached, semi-detached and terraced houses between one and two storeys. The apartments are contained within two blocks of between four and five storeys (inclusive of a basement) and five duplex building up to three storeys with access from Bellevue Hill to the west and Convent Road to the east in Delgany, County Wicklow.
- 4.3. ABP312451-21 permission for 59 houses, 36 duplex units, 4 apartments, creche, chapel proposed as community use, cafe, retail unit, GP/medical practice, 4 own door craft manufacturing unit, office unit, ESB plant, vehicular access, demolition of bungalow and outbuildings, 212 parking spaces, cycle spaces and ancillary site development works at the former Carmelite Lands, Convent Road, Delgany, County Wicklow (***current appeal as of date of this report***).

5.0 Policy and Context

- 5.1. **The National Planning Framework (NPF)**
- 5.2. National Policy Objective 33 seeks to “prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location”.
- 5.3. National Policy Objective 35 seeks “to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”.

5.4. The Eastern and Midland Regional and Spatial Economic Strategy

5.5. The RSES sets out a settlement hierarchy for the Region and identifies the key locations for population and employment growth. It includes Dublin City and suburbs, Regional Growth Centres (Drogheda, Athlone and Dundalk) at the top of the settlement hierarchy and identifies Key Towns in each area with the highest potential to accommodate growth. Other centres lower in the settlement hierarchy including Self-Sustaining Growth Towns, Self-Sustaining Towns, Towns & Villages, and Rural Areas are not specifically identified, and remain to be defined by the development plan.

5.6. Wicklow County Development Plan 2016-2022

5.7. The Wicklow County Development Plan 2016-2022 identifies Greystone/Delgany as a Level 3 (Large Growth Town II) town. The population of Greystone/Delgany is to grow from a current population of approximately 17,208 (2011 Census), to a target population of 21,603 by 2022 and 24,000 by 2028.

5.8. **The Greystones and Delgany Local Area Plan 2013-2019** is the latest LAP for the area. This plan will be reviewed on adoption of the new County Development Plan scheduled for September 2022

5.9. The vision is as follows: 'to build on the dynamism between the settlements of Greystones-Delgany and Kilcoole, so that the area develops in a mutually dependent and complementary manner as a prosperous and growing community. Each settlement shall have a distinct identity and shall perform a function in sustaining its own local community and in providing enhanced opportunities for the creation of new local enterprise. The area shall be a high quality, attractive and sustainable place to live, visit and conduct business. The combined area shall maximise the potential opportunities associated with its strategic location at the edge of the Dublin Metropolitan Area.'

5.10. The site is located on lands with the zoning objective R22, the objective of which is as follows: To provide for the development of sustainable residential communities up to a maximum density of 22 units per hectare and to preserve and protect residential amenity.

5.11. **Natural Heritage Designations**

Not relevant.

5.12. **EIA Preliminary Examination.**

5.13. Article 103(1)(a) of Schedule 5 of the Planning and Development Regulations 2001, as amended, provides that a planning authority (including the Board) on receipt of a planning application for sub-threshold development which is not accompanied by an EIAR shall carry out a preliminary examination of, at the least, the nature, size or location of the development.

5.14. Article 10(a)(b)(i) of the regulations provides that 500 dwelling units trigger the requirement for submission of an EIAR and carrying out of an EIA. Article 10 (b)(iv) of the regulations provides that urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere provides would trigger the requirement for EIA.

5.15. The present application is below these thresholds and therefore submission of an EIAR is not mandatory. However, since the potentially application falls into two classes specified in the Regulations it is necessary to carry out a preliminary examination of 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.

5.16. 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 no risk of water pollution.

- 5.17. The location of the proposed development on undeveloped 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 no foreseeable impact on areas designated under the Habitats Directive/Birds Directive.
- 5.18. 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 construction phase related impacts.
- 5.19. Having regard to this preliminary examination 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 did not provide for foul and surface water drainage from the adjoining Brooklands lands. These connections are required for orderly development and to meet government housing policy.
- House numbers 59 to 62 back onto the Brooklands site (the appellant's property) and will restrict light into and block sea views from the Brooklands site. It would be preferable to lower the height/condition bungalows at this location.
- The appellant has a right of way over the application site.

6.2. Applicant Response

- The present applicant proposed no significant changes to the water supply or foul or surface water systems permitted under PL27.248401 and these services are not part of this planning application. The Brooklands site is not part of this application and there is no onus on the applicant to provide services to it.

- Proposed houses 59 to 62 are a mix of bungalows and two storey houses, are set at lower elevation than the site at Brooklands (lower by about 1.5m FFL) and due east of that site. The proposed houses will not block daylight or injure the amenity of the Brooklands property.
- There is no right of way over the application site.

6.3. **Planning Authority Response**

- None

6.4. **Observations**

- None

6.5. **Further Responses**

- None

7.0 **Assessment**

7.1. This assessment will consider the grounds of appeal (Foul and surface water, impact of units 59 - 62 on of Brooklands, legal interest/right of way) and then the amendments proposed in the present application.

1. Foul and surface water
2. Impact on units 59, 60, 61 and 62.
3. Right of way.
4. Amended layout for 36 units.
5. Amended layout for units 43 to 53
6. Amended northern site boundary.
7. Amended numbers 47,48 and 49.
8. Boundary with convent lands and pedestrian/cyclist access.
9. Extended creche.

7.2. Foul/Surface Water.

7.3. The appeal makes the point that proposed development did not provide capacity for foul and surface water drainage from the adjoining Brooklands lands and that such additional capacity would be in the interests of orderly development and to meet government housing policy.

7.4. Irish Water reported no objection in relation to foul water drainage and the planning authority did not take issue with surface water drainage. The applicant responded that the foul and surface water management infrastructure within the site are being constructed as permitted under PL27.248401 and are not part of this application and it is not the responsibility of the present applicant to provide for the infrastructure needs of adjoining lands.

7.5. There is an existing permission on this site and the amendments proposed do not materially alter the wastewater/surface water infrastructure being installed. I conclude that this issue is not one which would give rise to refusal of permission for the present application.

7.6. Units 59 - 62 East of Brooklands.

7.7. The appeal makes the point that units 59 to 62 are east of the Brooklands site and will reduce sun light into the site and impact on its development potential. The applicant makes the point that numbers 61 and 62 are single storey houses while 59 and 60 are two storey houses, the topography falls away towards the east and that there is no potential for overshadowing of Brooklands from these units.

7.8. There were 3 houses previously permitted in this area under PL27.248401. The proposed houses (numbers 59 to 62) are due east of the rear of Brooklands, the applicant states that the FFL is 1.5m below the Brooklands and the separation distance of the two 2 storey units off the boundary is about 10m. While this separation distance is 1m short of the 11m routinely recommended between opposing first floor rear windows having regard to the other factors, especially the difference in site levels, I conclude that the proposed development will not impact on daylight into the Brooklands site, give rise to unreasonable overlooking or otherwise compromise its amenity value or development potential.

7.9. **Right of Way**

- 7.10. The appeal makes the case that the proposed development will interfere with a right of way between the appellant's property (Brooklands) and the application site (Richview).
- 7.11. The applicant makes the points that the appellant has submitted no written evidence of a right of way between the application site and Brooklands nor is there any on-site evidence of a right of way between the separate landholdings. The applicant includes a copy of legal advice that there is no such right of way.
- 7.12. The planning authority did not respond to the appeal.
- 7.13. The current appellant made a similar point in relation to a right of way over the Richview site in PL27.248401 but, as in this case, provided no evidence of a right of way. The Development Management Advice and Guidelines for Planning Authorities (DOEH&LG 2007) make the point that the planning system is not a mechanism for resolving property disputes and that section 34(13) of the Act provides that a grant of permission of itself does not entitle a person to carry out development. The Guidelines make the case that where a planning authority have doubts as to the sufficiency of the applicant's legal interest it may request additional information from the applicant. In this case I note that the appeal includes no evidence to support the existence of a right of way over the application site and, having regard to the applicant's response to the appeal, I conclude that the applicant has sufficient legal interest to make a valid planning application and I recommend that the Board need not pursue this matter further.
- 7.14. **Amended layout for 36 units.**
- 7.15. The amended layout is for 93 units. Two units are retained houses (the gate lodge on Bellevue Hill Road and Richview within the application site).
- 7.16. The amendments to 36 permitted houses 19 to 34, 54 to 60 and 72 to 84 will replace 4 and 5 bed semidetached houses with 3 and 4 bed and terraced houses (for the final layout see drawing CF11-001 received by the planning authority in the 10th November 2020). I consider that these amendments do not raise any planning concerns, give a wider variety of units on the site and bring up the overall density on site to about 21.93 units p/h to better reflect the objectives set out in the Sustainable Residential Development in Urban Area Guidelines for Planning Authorities.

7.17. Amended layout for units 43 to 53.

7.18. This is a minor amendment whereby these houses, the access road serving them and the public open space serving them move slightly south. The planning authority raised no objection to this arrangement, and I consider it to be a non-material change to the permitted development that raises no planning issues.

7.19. Amended northern site boundary.

7.20. For reasons which may have related to property lines the application varied the boundary by bringing it slightly south. The planning authority queried this arrangement by way of a request for further information and then clarification of further information.

7.21. The clarification of further information returned the northern boundary to its originally permitted position and included evidence of the applicants' ownership off the sliver of land what was being excluded from the amended application. This satisfied the planning authority on the point.

7.22. Having regard to the previous permission on site and the material submitted in this application I conclude that no adverse planning impacts arise from a grant of permission on the basis of this application as amended by the further information and clarification of further information submitted with this application.

7.23. Amended numbers 47,48 and 49.

7.24. These houses are to be reduced in floor area to 101.m² from 103.8.m² to comply with the planning authority's standards for social and affordable houses. The planning authority was satisfied with that arrangement, and I conclude that it raises no other planning issues.

7.25. Boundary with convent lands and pedestrian/cyclist access.

7.26. The planning authority requested details of the boundary wall with the convent lands to the south (subject to permission under SHD case ABP308467-20 and the provision of a shared pedestrian/cyclist link). The applicant submitted detail of the boundary wall and the pedestrian/cyclist link to the satisfaction of the planning authority – see drawing CFI -003 submitted to the planning authority 10th October 2020. The access is appropriately located lands to link up with a street permitted

under ABP308467-20 and illustrated in that case on the site layout drawing PL-C-168-SL-03.

- 7.27. I agree with the planning authority that these arrangements are acceptable, and I conclude that the boundary treatment proposed is acceptable as is the access to the convent lands to the southeast.
- 7.28. The planning authority attached condition 4(a) which required details of the treatment of the internal roads 6 and 7 as they terminate at the northern boundary. I recommend a similar condition in the draft order below.
- 7.29. **Extended creche.**
- 7.30. The creche is being extended to accommodate the additional housing being proposed in this application. I agree with the planning authority that this amendment is acceptable.

8.0 Recommendation

- 8.1. I recommend a grant of permission.

9.0 Reasons and Considerations

Having regard to the location of the application site on lands zoned for residential development in the Greystones/Delgany and Kilcoole Local Area Plan 2013 - 2019 (lifetime extended), to the development permitted under PL 27.248401, to the pattern of development in the area and subject to the conditions set out below it is considered that the proposed development would not seriously injure the amenity of residential or other property in the area, would accord with the provisions of the current Wicklow County Development Plan and 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 as amended by the further plans and particulars submitted on the 8th day of October 2020 and the 10th day of November 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>Reason: In the interest of clarity.</p>
2.	<p>This order permits the development of 93 houses and associated works.</p> <p>Reason: In the interests of clarity.</p>
3.	<p>Prior to commencement of development the details of the finish of roads 6 and 7 at the northern boundary shall be submitted to and agreed in writing with the planning authority.</p> <p>Reason: in the interest of public safety and orderly development.</p>
4.	<p>The proposed development shall be carried out in accordance with the plans and particulars and subject to conditions imposed in the grant of permission reference number PL27.248401 except where amendments permitted under this permission apply.</p> <p>Reason: In the interests of clarity.</p>
5.	<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 social and affordable housing in accordance with the requirements of section 96 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</p>

	<p>(other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.</p> <p>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 for the area.</p>
6.	<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 and Development Act 2000. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 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>

Hugh Mannion
Senior Planning Inspector

9th March 2022