



An  
Bord  
Pleanála

## Inspector's Report ABP-309410-21

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<b>Development</b>	Retention permission for site development works as constructed and planning permission to complete the site development works for 14 sites all as previous Planning Permission Ref. 99/17 and PL.24.119683.
<b>Location</b>	Coxtown, Dunmore East, Co. Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	20131
<b>Applicant(s)</b>	Maurice Glody
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Jacqueline O'Connor
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> of February 2022
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1. The application site (c.2.54ha) is located on the southern side of the Coxtown Road, on the south eastern side of the village of Dunmore East. There are a number of single storey type houses along the road frontage and some low density housing developments within the vicinity. A surfaced access road to the site, located between two existing single storey dwellings, is in situ from the Coxtown Road. There are footpaths and public lighting along this service road within the site, with a grass verge on the public road close to the access.
- 1.2. The site is irregularly shaped and while partially serviced is primarily undeveloped and is undulating in part. The topography slopes downwards to the southeast. There is surfaced cul de sac service road that traverses the site, some footpaths and street lighting standards are also in situ. There are two existing occupied detached bungalows centrally located within the site and serviced by this road layout.
- 1.3. The access road also serves 4 detached bungalows to the northwest of the site. This includes one access to serve 3no. of these bungalows and another access on the opposite side of the entrance. There were some diggers seen in the cul de sac turning area to the southwest of the site. The applicant's house is to the southwest of the site. This part of the site is more elevated. The appellant's house is to the north of this and is served by another entrance off a separate road to the west.
- 1.4. There is stream that is at a lower level to the northwest of the site. The site generally slopes downwards to the southeast. The area to the south and east of the site is undeveloped. There is a cliff path to the east of the site. The site is generally open and there are panoramic views from within the site over towards Hook Head in Wexford.
- 1.5. There is a greenfield site on the opposite (northern) side of the Coxtown Road. There has been a recent Board decision relative to that site – Ref. ABP-304962-19 refers. There are a number of holiday home single storey type dwellings/small clusters of housing in the general area. The site is within walking distance of the village and services in Dunmore East.

## 2.0 Proposed Development

2.1. This application is for the following at Coxtown, Dunmore East, Co. Waterford:

- Retention Permission for site development works as constructed;
- Planning Permission to complete the site development works for 14no. sites all as previous Planning Permission Ref. 99/17 and PL24.119683.

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 19<sup>th</sup> of January 2021, Waterford City & County Council granted permission for the proposed development subject to 12no. conditions. These generally concern infrastructural (roads, access and services) issues, construction works, noise restriction, social and affordable housing and provision for a development bond.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner had regard to the locational context, planning history and policy, to the interdepartmental reports and submissions made.

They requested Further Information to include the following:

- A Statement of Design Acceptance from Irish Water for the design of the foul and water connections.
- Revised proposals to provide for a more centrally located area of open space at the location of sites, 6, 7 & 8.
- A phasing programme for the proposed works including infrastructure and services and to outline how they will be managed.
- Full details of surface water drainage and any remedial works to the surface water drainage network to be agreed.

### Further Information response

Timothy Guerin, Consulting Engineer has submitted an F.I response on behalf of the Applicant which includes the following:

- A Design Acceptance (Irish Water) with regard to the foul and watermain design.
- Revised Site Layout Plan which includes regard to location of public open space and revised site numbers.
- A program of works to be completed with regard to surface water drainage.
- A drawing showing boundary treatment and online parking.
- Access can be provided to serve the lands to the west of the site by the present road from Laoi na Mara as outlined on the drawings submitted.
- There will be no access to dwelling (Cois Na Mara) from the road adjacent site 6. The end turning bay adjacent to site 3 shall be closed off.
- Details on footpaths – the turning circle, footpaths etc outside of the site boundary have been omitted on the revised site layout plan.
- A Site Location map showing lands adjacent to the land to be developed also owned by Maurice Glody, except for the sites that have been sold.
- Attached drawings showing cross sections of the road and footpath construction and layout of the site entrance.
- Revised Public Notices were submitted.

### Planner's response

They had regard to the F.I submitted and their response in Part 2 of their Report included the following:

- They note the details and the revised plans including the Site Layout Plan submitted.
- They note that the proposal has been reviewed by Roads Section and they do not object to the revised plans.
- That Water Services has recommended conditions.

- They conclude that the submissions/observations have been taken into consideration in the assessment of the proposed development and in response to the F.I.
- They note the unfinished nature of the site and that 2 sites are finished and occupied. Having regard to the nature of the site, the planning history (the overall development was granted by the Planning Authority and An Bord Pleanála under PD99/17 and PL24.119683), the zoning provisions and length of time the estate has been unfinished they consider it prudent and in the interest of residential amenity of existing property owners, future site developers and the proper planning and development of the area to attach a condition for the outstanding works to be completed prior to further sites being developed.

### 3.3. **Other Technical Reports**

#### Road Design

They advised that details of Road Marking, Road Signage, Tactile Paving areas and details, cross sections of footpath and road construction and locations and pedestrian crossing to existing footpath on L4202 be submitted.

#### Water Services

They advise that remedial works to be carried out on the surface water network can be achieved through compliance with future planning conditions. They recommend that a Phasing program for the proposed works be submitted. Also, that full details of surface water drainage and any remedial works to the surface water drainage network be submitted.

### 3.4. **Prescribed Bodies**

#### Irish Water

They are aware that some if not all the water and wastewater infrastructure (including a wastewater pump station) is already constructed and is being used by a number of existing properties within the site. This infrastructure has not been taken in charge.

### 3.5. Third Party Observations

3.5.1. A Submission has been made by Peter Thomson Planning Solutions on behalf of Jacqueline O'Connor, who is the subsequent Third Party Appellant. In summary this includes regard to the following issues:

- Land Ownership/Boundary issues leading to Encroachment
- Unauthorised Development – Permission PL24.119683 has long expired.
- Will result in piecemeal inappropriate development on this landholding
- Will cause loss of privacy, noise and disturbance for adjoining properties
- Premature pending a review of the Waterford CDP, the lands in this scenic area, should be zoned greenbelt.
- Issues with access, traffic and carparking.

Submissions from local residents have been taken into account in the Planner's Report. Regard is had further to issues raised in the context of the Third Party Grounds of Appeal and in this Assessment below.

## 4.0 Planning History

The Planner's Report includes a list of relevant planning history of the site and in the area. This includes the following:

### Subject site

- Reg.Ref. 99/17 – PL24.119683 – Permission granted by the Council and subsequently by the Board to Maurice Glody (6<sup>th</sup> of December 2000) for site development works for 26 sites in accordance with the said plans and particulars, subject to conditions.

Condition no.2 is of note relative to the number of units permitted. This is as follows:

Sites 22 and 26 shall be omitted and the length of the cul-de-sac serving them shall be reduced accordingly. Revised drawings showing how the developer proposes to give effect to this condition shall be submitted for the written agreement of the planning authority prior to the commencement of the development. These drawings may indicate a revised road and site layout for

the eastern end of the development to take account of the omission of the two sites, but any such revised layout shall not involve the construction of houses beyond the positions indicated for the western boundaries of sites 22 and 26.

Reason: In the interest of the amenities of the area.

Condition no.3 – The houses shall be single storey only.

Reason in the interest of the amenities of the area.

- Reg.Ref.05/1529 – Permission was granted to Tricorp Development Ltd, to construct two bungalow type dwellings and all associated siteworks at sites 14 & 15 Cois na Halle, Coxtown East.

These are the two dwellings that have been constructed on the site.

### Other Sites

- Reg.Ref. 18/798 – Ref. ABP-304962-19 Permission was granted by the Council and subsequently refused by the Board for the erection of a fully serviced, five bedroom two storey (ground floor level and basement) detached dwelling with two storey (ground level and first floor level) guest house with a shared entrance at ground floor level, external garage, terrace, storage area, leisure areas, provision of new vehicular entrance, landscaping and service connections together with associated site works.

This site is located on the opposite side of the road to the subject site. This was refused in summary by reason of density being considered too low and not in accordance with the guidelines as set out in Chapter 6 of the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' 2009, and being in conflict with National Policy Objectives in the National Planning Framework, (NPO18a and 33 refer). That it would not provide an acceptable density for efficiency in services land usage and would be contrary to the proper planning and sustainable development of the area.

A copy of the Board's decisions are included in the History Appendix of this Report

## **5.0 Policy Context**

### **Project Ireland 2040 - The National Planning Framework**

The framework is concerned with securing compact and sustainable growth. Objective 11 favours development within existing cities, towns and villages, subject to appropriate planning standards and achieving targeted growth.

Section 6.6 deals with Housing. National Core Principles include:

*Ensure a high standard quality of life to future residents as well as environmentally and socially sustainable housing and place-making through integrated planning and consistently excellent design.*

National Policy Objective 18a: *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.*

National Policy Objective 33: *Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.*

### **Sustainable Residential Developments in Urban Areas: Guidelines for Planning Authorities (2009)**

Chapter 6 of the Guidelines sets out key planning principles to guide the preparation and assessment of planning applications for residential development in small town and village locations such as Dunmore East. Section 6.8 refers to criteria for design and layout considerations for residential schemes within a small town or village.

Sections 6.11 provides the density standards for 'Edge of Centre sites' and 6.12 for 'Edge of small town/village sites'. These are discussed further in the context of the Assessment below.

Principles relative to design and layout are also set out in the 'Urban Design Manual – A best Practice Guide' which is a companion document to the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas'.

### **Quality Housing for Sustainable Residential Communities 2007**

This has regard to Urban Design Objectives in the Provision of Housing and includes advice on Design and Layout. The aim of these Guidelines is to identify principles and criteria that are important in the design of housing and to highlight specific design features, requirements and standards.



## **Design Manual for Urban Roads and Streets 2019**

The Design Manual provides guidance in relation to street design and design of residential areas. Four key design principles are interconnected street networks, multi-functional streets, a pedestrian focus and a multi-disciplinary approach. The provision of good pedestrian and vehicular permeability is a requirement. These design principles reflect the provisions of the Guidelines on Sustainable Residential Development in Urban Areas.

**The Planning System and Flood Risk Management 2009** (including the associated Technical Appendices), provides advice on how to minimise flood risk through the planning process. It distinguishes between the vulnerability of different types of development and three different flood zones A, B and C.

### **5.1. Development Plan**

The appeal site is located within an area covered by the Waterford County Development Plan, 2011-2017, the life of which has been extended under the provisions of S.11A of the Planning and Development Act 2000 (as amended).

Chapter 3 sets out the Core Strategy. This includes regard to compliance with National and Regional Planning Policy and Guidelines.

Chapter 4 sets out the County Settlement Strategy.

Dunmore East is designated in the County Settlement Hierarchy in Table 4.2 as one of the county District Service Centres. Section 4.4.3 states the following:

*Dunmore East has been identified in the Regional Planning Guidelines as a town where more measured growth is desirable in a manner that allows community, social and retail development to catch up with recent residential development.*

*Policy SS1: To ensure that development takes place in an orderly, rational and sustainable manner avoiding environmental degradation and in accordance with the recommendations of the DoEHLG publications; ...the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (2009) and any subsequent Guidelines issued by the DoEHLG.*

Policy SS2: *To give priority to the development in settlements with adequate wastewater and water supply infrastructure and those settlements targeted for infrastructural investment within the plan period.*

Section 4.11 refers to Green Belt and Buffer Zone Restrictions.

Chapter 5 relates to Housing and seeks to promote Sustainable Communities.

Reference is had to the relevant Government Guidelines. Housing Policy includes:

1. Ensure proper planning and sustainable development of the County, in terms of the location and quality of housing including housing type and mix, to secure the development of sustainable communities;
2. Implement Part V of the Planning and Development Act 2000 (as amended);
3. Meet the needs of persons with special needs such as the elderly, persons with disabilities, minority groups, etc;

The Housing Strategy has regard to Housing Mix in private housing schemes.

Volume 2 provides a Book of Maps which includes Dunmore East. The site is zoned 'R1' Residential with the rear part of the site within the 'Green Belt' zoning.

The site on the opposite side of the road has the objective DO11 - medium density housing. This has regard to the topography of the site, and proposed developments should have an appropriate/sympathetic approach to design which utilises the existing contours and respects the established pattern of development in the vicinity.

An area of land to the northwest within the Green Belt, is shown with objective DO15 – to facilitate the development of a wastewater treatment plant, which is to be provided under the Waterford Grouped Towns and Villages Scheme within the Plan period.

#### Infrastructure

Water supply: *There is adequate water supply in Dunmore East with limited spare capacity. It is anticipated that the water supply will be upgraded under the 'Water Services Investment Programme' during the lifetime of the plan.*

Wastewater: *Dunmore East is one of the villages to be provided with a new sewerage scheme under the Waterford Grouped Towns and Villages Scheme. It is*

*anticipated that the new plant will be constructed and commissioned within the Plan period.*

## **5.2. Natural Heritage Designations**

000764 Hook Head SAC, Co. Wexford is 3km east of site on other side of the bay.

002162 Special Area of Conservation: River Barrow and River Nore SAC is 3.7km of site.

004027 Tramore Back Strand SPA is 4.8km to the west of the site.

## **5.3. Preliminary Examination Screening for Environmental Impact Assessment**

An Environmental Impact Assessment (EIA) Screening report was not submitted with the application.

Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,
- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.

It is proposed to provide 14no. serviced sites for single dwelling houses in this development. The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of 2.54ha and is located within an existing built-up area but not in a business district. The site area is therefore well below the applicable threshold of 10 ha.

Therefore, while proposed development is of a type that falls within Part 2 of the Schedule 5 of the Planning and Development Regulations 2001 (as amended), Class 10 Infrastructure projects, construction of dwelling units, it is well below the threshold value for development that would trigger EIA (500 units). In addition, the scale of residential use proposed, will not involve the use of significant natural resources or the production of significant waste, pollution or nuisances. Furthermore,

the development would be located within an existing settlement and integrated with existing services. Having regard to the above, I consider that there is therefore 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

Peter Thomson Planning Solutions has submitted a Third Party Appeal on behalf of Jacqueline O'Connor. They refer to their Submission made to the planning application and their Grounds of Appeal include the following:

#### Inaccurate land ownership and misleading plans

- The applicant has not declared the full extent of his landholding in the application documentation as required under the Planning and Development Regulations and they provide details of this.
- The access track/lane is the subject of a legal dispute between the appellant and the applicant, with the latter constructing an unauthorised wall on the appellant's boundary.
- They refer to the Further Information submitted and note that the ownership would not allow for the turning head as shown in the site layout plans.
- The F.I response shows future service connections outside the application site red line boundary to serve the applicant's land to the north-west of his landholding.

#### Landlocking of the balance of the applicant's land

- They have regard to the Council's F.I request and to the issue of a Section 147 Agreement to sterilise land from future development.
- Revised site layout plans show the turning head and footpaths outside the redline boundary and service connections extending beyond the red line boundary into land which the appellant considered should be sterilised.

- They outline concerns regarding the end of the cul-de-sac between sites 2 and 6 and extended to the red line boundary. They note that on the site layout submitted with the F.I it stopped short of the redline boundary and it is therefore unclear whether it is proposed to serve future development or not. They include a photograph.
- The access track/lane in the applicant's ownership is not suitable for servicing and access is required from the cul de sac but not proposed or permitted.
- It has not been established whether or not the land to the northwest of the site would be landlocked.
- Uncertainty over the applicant's future intentions, blights the appellant's property.
- They note that the subject site has been the subject of planning applications and development proposals for in excess of 20 years, piecemeal development has occurred. The amenity of the area has been depleted and property values affected as a result.
- They refer the Board to an application 20/244 in respect of the applicant's son seeking to develop on this landlocked Residential zoned land. They note that taking into account all the issues arising that this application was not completed and deemed withdrawn.

#### Part V compliance

- No proposals for Part V compliance have been provided as required under legislation and the appellants is entitled to know how compliance under this legislation is proposed. The Council's F.I request was not complied with.
- The Planner's Report refers to a previous agreement to transfer Site no. 3 in front of the applicant's existing house. In the event the Board decides to permit they request this agreement be confirmed by a suitably worded condition.

#### Conclusion

- While they have no objection in principle to serviced sites on the application site, the piecemeal manner the landholding has been developed in the past

and will be developed in the future if permission is granted, including the uncertainty surrounding how the balance of the land will be used, is a major concern and is blighting the value of the Applicant's property.

- They request the Board to overturn the decision of the Council and refuse retention and planning permission.

## 6.2. Applicant Response

A First Party response has been submitted by Timothy Guerin on behalf of the Applicant. Their response to the Third Party Grounds of Appeal include the following:

- They refer to the full planning permission granted by the Board in 2000, Ref. PL24.119683 for 26 sites and to the planning history of the site. This includes reference to sterilisation and to development works carried out.
- The turning head is outside and has no bearing on the lands subject to the current planning application and has been removed from current plans.
- Any dispute over lands outside the lands of Reg.Ref. 20/131 has no bearing on the current planning application.
- The further information request only requested the extent of the applicant's land holding which is shown on drawing No. 3.00A and not for any lands to be sterilised.
- The turning circle, footpaths etc outside the planning application site boundary have been omitted in the F.I drawings. They also refer to the covering letter they sent with the F.I response to the Council.
- The end of the cul de sac between sites 2 and 6 will be closed off – item 7(c) of their F.I response refers.
- The applicant uses the dirt track from his dwelling to maintain the roads, footpaths etc as he has an excavator to carry out any works rather than travelling out on a public road from his main entrance to his dwelling on the north west of his lands – drg. 3.00A refers.
- The development is not piecemeal, there are two dwellings constructed on sites 14 and 15 and sites (10,11,12, and 19) have been sold and are awaiting

planning application completion of site development works to be finalised before they commence construction.

- It is incorrect to state that the area has been depleted and property values have been affected. Property values have increased in the area and no complaint has ever been made of the development.
- They refer to their letter regarding Part V. There is no issue with the applicant complying with Part V.

### **6.3. Planning Authority Response**

There is no response noted on file.

### **6.4. Observations**

None noted.

## **7.0 Assessment**

### **7.1. Principle of Development and Planning Policy**

- 7.1.1. The application site is a partially developed/serviced site located in the south-eastern part of Dunmore East. The Board decision in Ref. PL24.119683 relates to and is relevant to the works for retention to the serviced sites to be developed for residential as previously permitted on the subject site. This proposal is for an application for retention of site development works as constructed and planning permission to complete the site development works for 14no. sites.
- 7.1.2. As noted in the Waterford County Development Plan 2011-2017 (as extended) Dunmore East is designated in the County Settlement Hierarchy in Table 4.2 as one of the County District Service Centres. These centres provide an important service function for their hinterlands and each have their own development map and development objectives.
- 7.1.3. Volume 2 provides a Book of Maps which includes Dunmore East. The site is zoned 'R1' Residential with an objective to: "Protect amenity of existing residential development and provide new residential development – medium density" and the

rear part of the site within the 'Green Belt' zoning. It is noted that part of the site shown as open space appears to be located within the Green Belt. The lands to the south and west of the site are within the Green Belt.

- 7.1.4. National Policy Objectives 18a and 33 have been referred to in the Policy Section above. Objectives include that in all types of rural settlement, rural town living requires a proportionate and tailored approach to residential development. This means that it is necessary to tailor the scale, design and layout of housing in rural towns to ensure that a suburban or high density urban approach is not applied to a rural setting and that development responds to the character, scale and density of the town. However, it notes the issue of historically low-density housing development in rural towns and in general seeks to increase well designed residential density to increase efficiency and sustainability.
- 7.1.5. Section 6.8 of the *Sustainable Residential Developments in Urban Areas: Guidelines for Planning Authorities (2009)* outlines that the primary consideration for the design and layout of residential developments in small towns is that new development should relate successfully to the structure of the town or village. A number of design criteria are outlined, against which to consider such proposals and make the most effective use of the site, having regard to the criteria outlined therein. These include that the proposed development makes a positive contribution to its surroundings, has a sense of identity and place appropriate to the character of the existing small town or village and provides for effective connectivity and includes a design approach.
- 7.1.6. It is considered that having regard to policy and guidelines, and the residential zoning and planning history that the principle of a residential development is acceptable on this site within the development boundaries of Dunmore East. Regard is had further to the documentation submitted and to the background and issues raised including relative to compliance with planning policy and guidelines, density, design and layout, open space provision, access/traffic, permeability issues, drainage, screening for Appropriate Assessment and impact on the pattern of development and character and amenities of the area in this Assessment below.



## 7.2. Background

- 7.2.1. This application is for retention of the site works as constructed and completion of works for 14 sites all as previous permission Reg.Ref. 99/17 and PL24.119683 at Coxtown, Dunmore East. It must be noted that the Board's permission is dated 6th of December 2000, therefore it has now long expired. The site has been left unfinished for a number of years.
- 7.2.2. The original permission for the development of the site included the access, roads layout and services. Condition no. 2 of the said permission, imposed modifications including a reduction in the number of sites to 24. Condition no. 3 provides that the houses to be constructed on the sites be single storey only. Therefore, it appears that the proposal was for the provision of serviced sites and did not include detailed drawings showing house types, that rather these were to be agreed under separate permissions.
- 7.2.3. Some infrastructural site works have been done on foot of the parent permission. The access from the public road is in situ and there is a surfaced cul de sac access road that traverses the site, some footpaths and street lighting standards are also in situ. As has been noted above the original application permitted Ref. PL24.119683 granted permission for site development works for 24 sites. As shown on the Site Layout Plan each site was to contain a single storey detached house. However, details of house types were to be the subject of separate applications.
- 7.2.4. There are two existing occupied detached bungalows centrally located within the site and serviced by this road layout. As noted in the Planning History Section above these bungalows were constructed under permission 05/1529. To date these are the only dwellings to be constructed on the subject site. The current application has omitted these two sites, centrally located, that have been developed, however there is a reduction in sites to 14 from that originally permitted. This would appear to take into account the two centrally located sites where development is constructed, and also those sites that have since been sterilised.
- 7.2.5. Also, of note is that Permission had been granted for the development of other sites, within the layout, but these have not been constructed and have since expired. In response to the Third Party concerns that the development is piecemeal, the First Party notes the two dwellings constructed on sites 14 & 15 and that sites 10,11, 12

and 19 have been sold and are waiting for this planning application for completion of site development works to be finalised before they commence construction.

- 7.2.6. They note that five sites were sterilised to the southeast of the planning application in 2008/2009 by WCCC as were other development sites in the county. They provide that approx.90% of the site development works are completed and were completed prior to 2007/8. Due to the financial crises and no development occurred for a few years.
- 7.2.7. While regard is had to the planning history and land use zoning relative to the principle of a residential development on this site, it must be noted that the issue with a retention permission is whether the development would be acceptable, in its current form. Regard is had further to issues of Density, Design and Layout in this Assessment below.

### **7.3. Density, Design and Layout**

- 7.3.1. Chapter 3 of the Waterford County Development Plan 2011-2017 (as extended) sets out the Core Strategy. Section 3.4 (Table 3.4) refers to density on Residential Zoned lands. This includes: R1 (Medium density: 20 units/ha; R2 (low density): 10 units/ha and R3 (Phased) – Reserved for 2017-2023. Volume 2 of the said Plan includes regard to the village of Dunmore East. The site, which is within the village boundaries, adjoins the 'Green Belt' to the southeast, is primarily zoned 'R1' for medium density residential.
- 7.3.2. As noted in the Planner's Report the stated area of the site is 2.45 hectares and the development provides for 14no. residential units which equates to a density of 5.7 units per hectare. The Council note that this is well below the suggested density figure of 25 units per hectare set out in the Waterford CDP 2011-2017 (as extended and varied) for 'R1' medium density zoned land.
- 7.3.3. The National Planning Framework Project Ireland 2040 includes reference to achieving effective density and consolidation rather than more urban sprawl as a top priority. The relevant objectives aim to increase the densities and population of existing service centres and to avoid further unnecessary suburban sprawl.
- 7.3.4. Section 6.8 of the Sustainable Residential Development Guidelines provides Layout and Design considerations. Density standards are included in Section 6.11 which

outlines that in 'Edge of Centre sites' the emphasis will be on achieving successful transition from central areas to areas at the edge of the smaller town or village concerned. Densities of 20-35 units per hectare are promoted in these locations.

- 7.3.5. Section 6.12 considers densities of 15-20 dwellings per hectare on 'Edge of small town/village sites'. This is as long as, such lower density development does not represent more than about 20% of the total new planned housing stock of the small town or village. This is to ensure that planned new development in small towns and villages offer a range of housing types, avoiding the trend towards predominantly low density commuter-driven developments around many small towns and villages within the commuter belts of the principal cities and other Gateway locations. Such lower density development also needs to ensure the definition of a strong urban edge that defines a clear distinction between urban and the open countryside.
- 7.3.6. It is noted that an application on the opposite side of the Coxtown Road (albeit for a different type of residential development) was recently refused by the Board in Ref.ABP-304962-19 as it fell below the density standards in the Waterford CDP 2011-2017, the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) 2009, and the conflict between the low density proposed and certain National Policy Objectives (NPO) set out in Project Ireland 2040 National Planning Framework, such as NPO 18a and 33.
- 7.3.7. Taking into account that while the roads and some of the infrastructure has been laid out, the majority of the sites have not been developed the Board may decide in view of the time period that has elapsed to refuse on this low density basis, being contrary to current policy and guidelines. However, regard is also had to the legacy issue of this site and to the works already completed. It is noted that the First Party response to the appeal refers to a number of sites (as referred to in the Background Section above) that have been sold that are awaiting for this planning application for completion of site development works to be finalised before they commence construction. This includes reference to a Solicitor's letter which notes that the sale of these sites was completed in or about 2006/2007. The program of works included with the F.I submitted notes that these sites are being sold individually and the purchaser is responsible for seeking planning permission in accordance with planning of the area. Details of any such extant permissions have not been given.

#### **7.4. Design and Roads Layout**

- 7.4.1. Regard is had to the Site Layout Plan submitted with the original application and revisions in the Further Information submitted. Details submitted note that the site nos. 6,7 & 8 on the previous Site Plan have been revised to nos. 9,10 & 11- drawing no.3.01 refers. While this revision in site numbers is noted, there have been no changes to the 14 no. of sites as applied for in this application.
- 7.4.2. The F.I submitted includes the approximately 90% of the site development works are completed. That when permission for the site development works has been obtained that works will be done (they provide a list) for completion of the said infrastructural works to roads, footpaths, green area and services.
- 7.4.3. As shown on the drawings access to the subject site can be provided to serve the lands to the west of the site by the present road from Laoi Na Mara. It is noted that as shown on the revised plans boundary treatments of the sites and onsite parking have been shown. The front boundary of the sites is to be open plan.
- 7.4.4. The proposed open space is in the south-western part of the site. This area corresponds to the area zoned 'Green Belt'. Therefore, while there is a question as to the peripheral location and passive surveillance of this area, it would not be in accordance with the zoning to use it for residential purposes. It also appears that this area was shown on the original plans as open space.
- 7.4.5. If the Board decides to permit details of phasing should be provided to ensure that common areas and required remedial works are completed to acceptable standards in a timely manner as there are existing dwellings on site which are occupied.

#### **7.5. Legal issues**

- 7.5.1. The Third Party Grounds of Appeal have been noted. This includes their concerns regarding land ownership, encroachment and misleading plans. They refer to land between the applicant's existing house and the appellant's house and the access track/lane running along the boundary of the appellant's house. They note that the parcel of land to the east of the appellant's house and the access track/lane is the subject of a current and separate application for a house for the applicant's son.

Reg.Ref.20/244 refers. It is noted that having regard to the Waterford City & Council website that this application has been deemed withdrawn.

- 7.5.2. They provide that the access track/lane is the subject of a legal dispute between the appellant and the applicant and refer to the applicant constructing an unauthorised wall on the appellant's property. On site I noted that the low wall in question appears to be outside of the area of the subject site (as shown within the redline boundary) and bounds the access road to the applicant's house, rather than the entrance from the Coxtown Road to the subject site. It is a narrow lane and is not used as a vehicular entrance to the subject site. It is of note that if there is unauthorised development that this is within the remit of the Planning Authority, rather than the Board.
- 7.5.3. The Third Party provide that the site ownership map submitted with the F.I response confirms the true extent of the applicant's ownership along this access track/lane. The ownership would not allow for the turning head which the applicant's agent stated in the F.I response has been removed from the plans but still appears on plans showing the service layouts. They are concerned that the service layout plans submitted show future service connections outside the application site red line boundary to serve the applicant's land to the north-west of his landholding. This is shown in blue on the said drawing.
- 7.5.4. In response to the F.I request the applicant confirms that there is no access to his dwelling (Cois Na Mara) from the road adjacent to site 6. They provide that the end of the turning bay will be closed off. The First Party provide that the applicant resides in the aforementioned property and that he uses the dirt track from his dwelling to maintain the roads, footpaths etc on the site as he has an excavator to carry out the works rather than travelling out on the public road from his main entrance to his dwelling on the North West of his lands. If the Board decides to permit, I would recommend that it be conditioned that this access not be used as a vehicular access for the future development of the subject site.
- 7.5.5. The issue of encroachment is a civil matter, and the applicant is advised that in the event of encroachment or any dispute regarding easements concerning the adjoining property, the consent of the adjoining property owner is required. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I

note here the provisions of s.34(13) of the Planning and Development Act: “*A person shall not be entitled solely by reason of a permission under this section to carry out any development*”. Under Chapter 5.13 ‘Issues relating to title of land’ of the ‘Development Management - Guidelines for Planning Authorities’ (DoECLG June 2007) it states, inter alia, the following: “*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*” In other words, the developer must be certain under civil law that he/she has all the rights in the land to execute the grant of permission.

## **7.6. Drainage**

- 7.6.1. The Further Information response includes a letter from Irish Water, who provide that they have no objection to the proposals. They are aware that some if not all the water and wastewater infrastructure (including a wastewater pump station) is already constructed and is being used by a number of existing properties on site. They note that this infrastructure has not been taken in charge. Inspection and tests are to be carried out to the existing water and wastewater infrastructure within the site, to ensure it is fit for purpose before any new properties receive a connection offer from Irish Water. They provide that any issues found during these inspections and tests shall be rectified before any new properties will receive a connection from Irish Water. It is noted that this is subject to separate remit.
- 7.6.2. The Council’s Water Services Section advise that the scheme is acceptable to WCCC and any remedial works to be carried out on the surface water network can be achieved through compliance with future planning conditions. These include that a phasing program for the proposed works be submitted. If the Board decide to permit, it is recommended that appropriate drainage conditions be included.

## **7.7. Screening for Appropriate Assessment**

- 7.7.1. Having regard to the nature and scale of the proposed development located within an existing built up serviced urban area, resulting in no material impact to existing services, and c. 3.7km from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely

to have a significant effect, individually, or in combination with other plans or projects, on a European site.

## 8.0 Recommendation

- 8.1. I recommend that retention permission for site development works as constructed and planning permission to complete the site development works for 14no. sites all as previous planning permission Ref. 99/17 and PL24.119683, be granted subject to the conditions below.

## 9.0 Reasons and Considerations

Having regard to the previous planning history, to the residential zoning objective of the site in the current Waterford County Development Plan 2011-2017 (as extended), and having regard to its design and layout and the established pattern of development in the vicinity of the site, it is considered that the proposed development would not seriously injure the visual or other amenities of the area, would be acceptable in terms of traffic safety and convenience, and would be in accordance with the proper planning and sustainable development of the area

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 3<sup>rd</sup> day of December 2020 and by the further plans and particulars received by An Bord Pleanála on the 3<sup>rd</sup> day of March, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. (a) The development works for the 14no. serviced sites hereby retained and permitted shall be carried out as shown on the plans submitted.
- (b) The future development of the individual sites shall be the subject to separate applications for planning permission.
- (c) The houses to be constructed on site shall be single storey only.

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

- 3 (a) The access, internal road network and traffic arrangements serving the site, including turning bays, junctions, parking areas, footpaths and kerbs, shall comply with the detailed standards of the planning authority for such works and shall be carried out at the developer's expense.
- (b) Proposed pedestrian access shall comply with the detailed standards of the planning authority for such works.
- (c) The cul-de sac at the south-western part of the site between site nos. 2 and 6 shall not be used as a vehicular access to/from lands outside the site.

**Reason:** In the interests of pedestrian and traffic safety.

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

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

5. Water supply and drainage arrangements, including the 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.

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

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



7. 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. Any existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

8. The site including the open space shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) A plan to scale of not less than 1:500 showing –

(i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder and which shall not include prunus species.

(ii) Details of screen and boundary planting which shall not include cupressocyparis x leylandii.

(iii) Hard landscaping works, specifying surfacing materials, furniture, play equipment for the open space and finished levels.

(b) Specifications for mounding, levelling, cultivation and other operations associated with the open space and plant and grass establishment.

(c) A timescale for implementation including details of phasing.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

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

9. 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.

10. 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, traffic management and noise reduction measures and off-site disposal of construction/demolition waste.

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

11. 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, 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

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Angela Brereton  
Planning Inspector

16<sup>th</sup> of March 2022