



An
Bord
Pleanála

Inspector's Report

ABP-310679-21

Development	Construction of 4 no. two storey semi-detached dwelling, connection to the existing estate foul and storm drainage and all associated site works
Location	Ballyloughnane, Riverstown, Birr, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	20614
Applicant(s)	Brendan Garry
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Aisling McMahon
Observer(s)	None
Date of Site Inspection	8 th September 2021
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The subject site is at Ballyloughnane, Riverstown, Birr, approximately 1.3km southwest of Birr town centre. It comprises a relatively small pocket of open green space within an existing residential development. It is located between two rows of existing dwellings, which are to the southeast and northwest, respectively, and there is a large open green space at the rear of the site to the southwest.
- 1.2. The site forms part of a wider, existing residential development known as Farmleigh, which comprises a mix of semi-detached and detached houses. The dwellings have driveways with off-street parking. There is also on-street visitor carparking available on the surrounding street network. An internal estate road, leading from the Riverstown Road (R489) to the northeast, provides access to the site.
- 1.3. The site is approximately 120m to the northwest of the N52 (National Secondary Road), which runs northeast in the direction of Birr and southwest towards Nenagh. Riverstown village is roughly 400m to the southeast.
- 1.4. The site has a stated area of approximately 0.15ha.

2.0 Proposed Development

- 2.1. The proposed development is for the construction of 4 no. two-storey, semi-detached houses each measuring approximately 147sq m. The proposed layout and design of each dwelling is similar to that of the adjacent, semi-detached dwellings on the street. The proposal seeks to connect to the public mains and sewer.
- 2.2. The Planning Authority requested further information in August 2021, which required:
 - the preparation of a Development Impact Assessment (Item 1),
 - details addressing the requirement for the provision of public open space (Item 2),
 - the provision of visitor car parking spaces (Item 3),
 - confirmation there is adequate capacity in the existing wastewater treatment system (Item 4),
 - details regarding boundary treatments (Item 5), and

- and a proposal to comply with Part V of the Planning and Development Act, 2000, as amended (Item 6).

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority granted permission on 3rd June 2021, subject to 18 no. conditions, which are standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The basis for the Planning Authority's Decision includes:

- The proposed density of 40 units per hectare was considered acceptable and in accordance with national planning guidance.
- The proposal would not lead to any inappropriate overlooking or overshadowing of adjoining sites, and minimum separation distances from the gable ends of adjacent dwellings has been achieved.
- The Applicant prepared and submitted a Development Impact Assessment (DIA) as part of further information. The DIA provided information on settlement form, housing need and mix, capacity of community and public facilities, and capacity of wastewater and water services infrastructure. The Planning Authority considered the proposed to be acceptable upon receipt of this information.
- The existing public open space provision within the wider residential development was considered acceptable and sufficient to meet the needs of the development proposed.
- The proposed layout and quantum of resident and visitor car parking was considered acceptable.

3.2.2. Other Technical Reports

- Water Services Department provided a verbal response, which is referenced in the Planner's Report. No objection to the proposal, but it was noted the area's pumping station to treatment plant has flooding issues and that the public water supply is at capacity. Advised that a Pre-Connection Enquiry (PCE) be submitted to Irish Water.
- District Engineer, no response provided.
- Chief Fire Officer, no response provided.

3.3. Prescribed Bodies

- Minister for Arts, Heritage & the Gaeltacht, no response received.
- Irish Water, no response received. However, a letter was issued by Irish Water to the Applicant in response to a Pre-Connection Enquiry. The letter states that the proposed connections to Irish Water network(s) can be facilitated.

3.4. Third Party Observations

A total of 9 no. third party observations were received by the Planning Authority, including from residents in the surrounding area. The main issues raised can be summarised as follows:

- There is no local need for additional housing in this location.
- Insufficient infrastructure to support the proposed additional houses (schools, footpaths, public transport).
- A traffic hazard would be created with additional entrances and haphazard car parking.
- Noise created during construction.
- Devaluation of nearby properties.
- Sewerage plant requires upgrading.
- Water supply issues.

4.0 Planning History

Subject Site

There is no relevant planning history on the subject site.

Surrounding Area

Reg. Ref. 04511072: The Planning Authority granted permission in March 2005 for 69 no. residential dwellings on the immediate surrounding lands at Ballyloughnane, Riverstown.

Reg. Ref. 06510809: The Planning Authority granted permission in August 2006 to amend Reg. Ref. 04511072 which comprised modifications to the permitted house types and site boundaries.

Reg. Ref. 07510591: The Planning Authority granted permission in June 2007 to amend Permission Reg. Ref. 04511072 which comprised design modifications to 8 no. two storey terraced houses and permission for 2 no. additional houses.

Reg. Ref. 20/612: A planning application for the construction of 6 no. two-storey semi-detached dwelling houses, new boundaries, and associated site works was submitted to Tipperary County Council on 18th June 2020. The Planning Authority granted permission on 3rd June 2021, subject to 18 no. conditions. A third party appeal has also been lodged against this development proposal, which, at the time of writing, is the subject of a live appeal case (ABP Ref. ABP-310643-21).

5.0 Policy Context

5.1. North Tipperary County Development Plan, 2010 (as varied)

The site is zoned 'Existing Residential' under the *North Tipperary County Development Plan, 2010 (as varied)* ('Development Plan'), which seeks "*to preserve and enhance existing residential development and residential amenity and provide for additional facilities where gaps are identified.*"

Table 10.3 ('Minimum Design Standards for Residential Schemes') of the Development Plan sets out development management standards for which the proposed development is required to adhere to.

5.2. Natural Heritage Designations

No designations apply to the subject site.

The nearest European Site is the Ballyduff/Clonfinane Bog SAC (Site Code: 000641), which is approximately 3.4km to the west of the site.

The Killeen Bog NHA (Site Code: 000648) is roughly 1.6km to the west of the site.

5.3. EIA Screening

Having regard to the nature and small scale of the proposed development, which comprises 4 no. infill dwellings on a fully serviced, urban area within an existing residential development, and its proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. Environmental impact assessment, therefore, can be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of appeal are as follows:

- The proposed development is premature pending the upgrade and expansion in capacity of the Riverstown Wastewater Treatment Plant.
- No upgrade works have been carried out at the Riverstown Wastewater Treatment Plan since the publication of the North Tipperary County Development Plan, 2010.
- The Irish Water website states that the best practice approach to establishing the feasibility of a connection to the water network is to make a Pre-Connection Enquiry prior to making a planning application.
- The Riverstown Wastewater Treatment Plan is at capacity.
- The Applicant has made no effort to demonstrate that there is capacity in the Riverstown Wastewater Treatment Plan to cater the proposed development.

- The Applicant's did not demonstrate that Irish Water have approved the pre-connection enquiry submitted by the Applicant and, therefore, a Decision to grant permission is premature.
- If the existing pumping station is liable to flood under its existing load, then this presents a potential public health risk.
- It is submitted that the proposed development is premature pending the flood risk assessment of the pumping station serving the Riverstown Wastewater Treatment Plan, and the carrying out of remedial works to prevent flooding in the future.

6.2. Applicant Response

The Applicant lodged an Appeal Response on 26th July 2021, which includes the following main points:

- There is no change to the proposed method of foul sewer and storm water disposal for the overall residential development ('Farmleigh'), which was permitted under the original Decision (Reg. Ref. 04511072) in March 2005, and also in subsequent amendment applications.
- The Applicant contacted Irish Water to relation to the making of a PCE and response was received on 3rd November 2020. Irish Water advised that the proposed connections to Irish Water networks can be facilitated at this time.
- An email from Tipperary County Council (dated 13th May 2021) requested a response on the proposed development from Irish Water, but this was not received. Therefore, there is no objection from Irish Water.
- It is not possible for the Applicant to enter any further form of dialogue with Irish Water without the benefit of a Full Grant of Planning Permission.

6.3. Planning Authority Response

- No response.

7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Services
- Layout and Design
- Appropriate Assessment

7.1. Services

- 7.1.1. The substantive appeal issue is in relation to the availability of adequate wastewater infrastructure to serve the proposed development.
- 7.1.2. The Applicant proposes to connect the proposed development to the existing public wastewater infrastructure system that serves the appeal site and wider, existing residential development that is Farmleigh.
- 7.1.3. To address potential wastewater capacity issues, the Applicant consulted directly with Irish Water and received a written response on 3rd November 2021. The response confirms the feasibility of connection for the proposed development and that the new houses can be facilitated.
- 7.1.4. A copy of this letter is appended to the Applicant's Appeal Response (Irish Water Ref. CDS20005371). The document clearly states that the outcome of the Pre-Connection Enquiry is that connecting to the water and wastewater networks is feasible without any infrastructure upgrades being undertaken by Irish Water.
- 7.1.5. Having regard to the above, I am satisfied that there is capacity in the Riverstown Wastewater Treatment Plan to cater the proposed development. It is also noted in the Planner's Report that the Council's Water Services Department has no objection to the proposal.
- 7.1.6. In the event the Board considers granting permission, I would recommend that a condition is included that requires the Applicant to enter into a water and wastewater connection agreement with Irish Water, prior to commencement of development.
- 7.1.7. [Note: A concurrent appeal is currently before the Board for consideration, under ABP Ref. 310643-21, which comprises the construction of 6 no. dwellings within the existing Farmleigh residential estate. The proposed dwellings are approximately 200

metres to the east of the appeal site. Irish Water have provided a similar letter in relation to that development proposal and confirmed that there is adequate network capacity to accommodate it without requiring any infrastructure upgrades.]

7.2. Layout and Design

- 7.2.1. The design, layout and orientation of the proposed dwellings are in accordance with the existing pattern of development in the area. In terms of design, the proposal is compliant with the various development management standards set out under Table 10.3 of the Development Plan.
- 7.2.2. There is no potential for significant overlooking of adjoining residential properties. The site to the rear of the appeal site is currently vacant, and the proposed development achieves the minimum required separation distances (4.0m) between dwellings.
- 7.2.3. The proposed dwellings are each required to provide a minimum of 60sqm private open space. This is achieved by each dwelling proposed, with the smallest area of private open space 101 sq m.
- 7.2.4. In terms of public open space, it is noted that the proposed dwellings will form part of the wider Farmleigh residential estate. The estate is served by an existing public park, which is approximately 150m to the east, roughly a 3-minute walk away. The park is landscaped, accommodates basic play equipment, and is a high-quality public open space area. I consider that the existing provision of public open space is sufficient to serve the proposed development, which comprises 4 no. infill dwellings.
- 7.2.5. [Note: A separate, concurrent appeal is currently before the Board for consideration (ABP Ref. 310643-21), which comprises the construction of 6 no. dwellings. I consider that in the event permission is granted for both development proposals, there would be sufficient public open space to cater for total number of new houses permitted, which would be 10 no. dwellings in total.]

7.3. Appropriate Assessment

- 7.3.1. No designations apply to the subject site. The nearest European Site is the Ballyduff/Clonfinane Bog SAC (Site Code: 000641), which is approximately 3.4km to the west of the site.
- 7.3.2. Having regard to the nature and small scale of the proposed development, which is for four infill houses in an established urban and serviced area, the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, 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 planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the North Tipperary County Development Plan, 2010 (as extended) and the relevant land use zoning objective that applies to the site ('Existing Residential'), which seeks to preserve and enhance existing residential development and residential amenity, and provide for additional facilities where gaps are identified, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the property in the vicinity, and would provide an acceptable standard of amenity for future residents. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the Planning Authority, 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>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
	<p>Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
3	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
4	<p>The developer shall pay to the planning authority a financial contribution respect of public infrastructure and facilities benefitting 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 the commencement of</p>

	<p>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 developers or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>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.</p>
5	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.</p>
6	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning</p>

	<p>authority or any other prospective party to the agreement to An Bord Pleanála 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 of the area.</p>
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Ian Boyle
Planning Inspector

4th October 2021