



An
Bord
Pleanála

Inspector's Report ABP-310803-21

Development	To build 40 no. dwelling houses.
Location	Adamstown, Kilmeaden, Co. Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	20400
Applicant(s)	Michael Guiry
Type of Application	Permission.
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	1. Derek and Jacqueline Van Veen 2. Frank Power 3. Ivor and Ava Bagge.
Observer(s)	None
Date of Site Inspection	26 th of August 2021.
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. Kilmeadan village is located approximately 8km west of Waterford City and 36km east of Dungarvan. Kilmeaden is located on the R680 Regional Road. The village has a long linear settlement pattern flanking both sides of the R680 (*formerly the N25 Waterford-Cork, national primary route*).
- 1.2. The site is located opposite the Kilmeaden Village Centre which caters for retail and apartments. The access road to the site is directly off the R680 and ascends towards a farmyard shed. The access road is a strip of land between two bungalows. The agricultural holding includes the subject site to the north-west and the farm backs onto the Adamstown Water Treatment Plant. Essentially the subject site is a backland form of development.
- 1.3. There are 4No. bungalows backing onto the subject site and these are positioned at a lower ground level than the subject site. There is very little separation distance between the building line of the bungalows and the site boundary.
- 1.4. The subject site is 1.24Ha, and is the subdivision of an agricultural holding. The site is not level and ascends northwards away from the R680. At the time of my inspection the site was been used to graze livestock.

2.0 Proposed Development

- 2.1. The planning application applied for includes planning permission for 40No. dwellings consisting of:-
 - (i) 14No. two storey semi-detached dwellings
 - (ii) 16No. two storey terraced houses in two blocks
 - (iii) 10No. two storey terraced houses in three blocks with an option of providing a third floor to any of the three blocks.

The installation of necessary services, connection to the foul drain and connection form existing water main both on the main road adjoining (R680) and all associated site development works.

- 2.2 The Clarification of further information submitted on 20th of May 2021 states:

Surface water run-off is designed to include two new surface water collection filters and attenuation systems.

Sectional drawings identifying any possible impacts with adjoining dwellings

Agricultural entrance shall be retained alongside House No. 1

3.0 Planning Authority Decision

3.1. Decision

Waterford City and County Council granted planning permission for the proposed development subject to 21No. standard conditions which granted a reduced scheme of **25No. dwelling units**.

1. The permission is for 25No. dwellings and 6No. apartments;

The 2No. agricultural accesses located to the south of dwelling No. 1 and at the north-eastern corner of the site as indicated on site layout drawing 20th of May 2021 are omitted from the permission.

2. Development Contribution of €99,000

6. Sightlines

3.2. Planning Authority Reports

3.2.1. Planning Reports

A summary of the relevant issues raised in the Planning report (8th of June 2021) are summarised as follows:

- Irish Water requirements submitted
- Dwellings along western boundary revised to single storey (No.s 17, 18 and 25).
- The proposed apartment block is set at a ground level of 22.5metres which is 8metres higher than the entrance level of the site. It would be preferable if the site was cut down to 21m contour. There is concern regarding the bulk and location of the apartment block.

- The agricultural accesses from the proposed estate are undesirable, they should be omitted.
- Permission is recommended

3.2.2. **Other Technical Reports**

Irish Water: No objections

Water Services: Further Information required

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

There was a high volume of objections to the

4.0 **Planning History**

There is no relevant planning history relating to the subject site apart from an incomplete planning application, planning reference

5.0 **Policy Context**

5.1. **Development Plan**

The relevant development plan is the Waterford County Development plan 2011-2017.

There is a zoning map for Kilmeaden village. The subject site area is zoned **R1 – *Protect amenity of existing residential development and provide new residential development -medium density.***

The remainder of the landholding is zoned **Green Belt**, with a large treatment plant in the middle of the green belt.

Infrastructure

Water supply: The public water supply has limited spare capacity.

Wastewater: The wastewater treatment system has limited spare capacity and may require an upgrade to accommodate new development.

5.2. Natural Heritage Designations

The Natura 2000 sites within 15km of the proposed development area:

- Lower River Suir SAC, Site Code 002137
- Tramore Dune and Backstrand Site Code : 00671
- Comeragh Mountains SAC , Site Code 001952
- Mid Waterford Coast SPA, Site Code 004193

5.3. EIA Screening

Having regard to the nature, size and location of the proposed development, the fully serviced nature of the development, and its location within an urban settlement adjoining an established residential estate and on lands on which residential development was previously permitted, it is considered that there is no real likelihood of significant effects on the environment. The submission of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 *Ivor and Ave Bagge, Adamstown, Kilmeaden*

The **2metre wall** used as a boundary was not taken into account, as the wall will hang over, dominate and overshadow their house, which will significantly reduce natural light into their kitchen, dining room, bathroom and bedroom at the back of the house. The 2metre wall will only be 4.6m, and it will be sitting on higher ground on top of their existing 1.83m rear boundary wall, making the new 2m wall of the proposed development higher than the ridge line of their bungalow.

Surface water would naturally run downwards and their house sits lower than the proposed site.

There is a dwelling positioned beside their bungalow and it is too close to their house and directly facing into their house at a higher ground level.

There are plans to build apartments on the site which will look out of place on the surrounding countryside.

The required sightlines cannot be achieved as the entrance is too small and share with farm machinery. The adjoining road is busy (R680) and so are the footpaths for young children.

6.1.2 ***Frank Power, Apartment 5, Kilmeaden Village Centre***

The owner of the land is his brother Mr. Maurice Power, Youghal, Co. Cork, and not the applicant who applied for the subject planning permission. The volume of stormwater entering the stream from the proposed development will cause flooding to adjacent lands.

The private treatment plant connected to and servicing storm water drainage at Kilmeaden village, is foul smelling and noisy and depositing further stormwater into the stream will cause more contamination and pollution.

6.1.3 ***Derek and Jacqueline Van Neen, St. John's Adamstown, Kilmeaden***

- **Invasion of Privacy:** There are 7No. dwellings that will overlook their house, two of which with the possibility of being three stories high, which is totally out of character with the existing houses and surrounding area. All houses surrounding the proposed site is of bungalow. The proposed dwellings will destroy the privacy of their kitchen, utility, living area, bedrooms and patio area. The height of the proposed development ranges from 7.98m to 9m, and the two storey dwellings will overlook the existing rear gardens of existing dwellings which are all single storey. If a third storey is added the dwellings could increase in height to 11metres. The houses will break the skyline which is not proper and sustainable planning as set out in the Waterford County Development Plan 2011-2017.
- **Boundary :-** Three sides of their property is going to be surrounded by the proposed development. There are no proper walls proposed to protect and segregate their property from being part of the proposed site.
- **Noise:** Road access to the proposed site is running along three sides of their property all within 6metres of their house, and there will be over a 100cars

per day passing creating noise that will have a negative affect on their amenities.

- **Lighting:** There could be bright lights shining into their windows and property at night, taking away the true felling of living in a rural setting.
- **Site Entrance:** The proposed entrance is to shared by the farmer who owns the land. The farmer has a registered right of way over the entrance as part of Land Registry Folio (WD31658F). The farmer has no other access to his land other than this laneway. This creates a major health and safety issue with large agricultural machinery and livestock entering and existing the same lane as residences of the proposed site.

How can the entrance sightlines be achieved? There is also an attenuation tank submerged in the area. The proposed recessed entrance is very narrow to accommodate the level of traffic associated with the proposed development. The roadway is 10.7metres wide with farm machinery also onto it. There are no letters of consent form adjoining landowners indicating they would be willing to allow their lands to be setback to achieve the required sightlines. It does not meet the county development plan development management standards.

- **Ownership of Land:** The land registry compliant map provided with the planning application does not seem to match the area of the development as shown on the planning map viewer. The land registry shows the site is split into two folios WD31657F and WD31658F. Can the applicant confirm he owns both folios.

6.2. Applicant Response

The applicant's response was received outside of the appropriate period of 4 weeks.

6.3. Planning Authority Response

There was no response form the planning authority.

6.4. Observations

There were none submitted on appeal.

7.0 Assessment

7.1 The appeal will be examined under the following headings:

- Planning Policy
- Impact on Residential Amenities
- Traffic Parking
- Other Matters
- Appropriate Assessment

7.2 ***Planning Policy***

The relevant development plan is the Waterford County Development Plan 2011-2017 which is currently under review. Kilmeaden is listed in the County Settlement Strategy as a ***District Service Centre***. The District Service Centres are important resources for their hinterlands, providing community and infrastructural facilities and services and the population base to maintain them. A key factor in the designation of the District Service Centres has been the availability, or anticipated provision within the Plan period, of wastewater treatment facilities, thereby allowing for the potential growth of these settlements. The close proximity to Waterford City implies Kilmeaden is under development pressure as a satellite village.

The subject site is zoned **R1** which is *to protect the amenity of the existing residential development and provide new residential development -medium density*. The site is within the village envelop and is positioned to the rear of existing dwellings with direct access onto the Regional Road located between two bungalows. I would consider the site a form of backland development because the proposal is to the rear of existing dwellings within the settlement.

The original submission to the planning authority included for 40No. dwellings units, however following revisions to the scheme as requested by the planning authority, the overall permitted scheme included 25No. dwellings and 6No. apartments, including site development works.

The proposed development of the 31 dwelling units would form a coherent addition to the established residential pattern of Kilmeaden village. This is a fully serviced site and will ensure optimum utilisation of existing infrastructure. The proposed in depth housing development is consistent with the character, scale, and density of development which prevails to the east of the site. I submit to the Board that the proposed development, within the development boundary of the village, would present as a natural extension to the existing village. This is consistent with the provisions of the Waterford County Development Plan residential zoning objective and the Settlement Policy of the Plan, and I consider this to be a sustainable form of development.

7.3 Impact on Residential Amenities

There are a number of issues that need to be addressed under the appeal relating to residential amenity. This is a third-party appeal taken by a number of residents residing alongside or in close proximity to the subject site. I submit to the Board this is a challenging site due to its elevation above the existing dwellings aligning the western and southern site boundaries, and the proximity of a number of dwellings alongside the western site boundary.

I examined the site from the contiguous properties, and it is clear the site has clear views into the adjoining residential properties and is positioned almost 2metres above the level of the adjoining houses. With that in mind one would expect detail design consideration and responses to the constraints presented by the topography and proximity of adjoining residences. However, these were not included with the planning application documentation.

The planning authority in the letter of further information (13th of August 2020) stated the open space to be relocated centrally away from the western site boundary, and the proposed dwellings were two storey which would be overbearing when viewed from adjoining single storey dwellings on the lower sites. The applicant revised the overall scheme at the request of the planning authority. There was further clarification requested on design issues and finally 3No. J type dwellings were permitted along the western site boundary in close proximity to the boundary,

creating, in my opinion, a more bulky and overbearing building envelop than the original proposal. I submit to the Board I am concerned about the lack of attention to the contiguous houses in the consideration of the overall design response. I do not consider any of the proposed layouts respect the existing neighbouring dwellings, and the permitted layout submitted on 20th of May 2021 is more injurious to the existing amenities than the original layout due to the proximity and bulk of the dwellings orientated towards neighbouring dwellings and the close proximity to them. I submit to the Board the proposed development would be highly oppressive when viewed from the contiguous dwellings, would seriously injure the residential amenities of the area by reason of overlooking, and would fail to adequately respond to its elevated context or integrate successfully with the immediate and surrounding built environment.

7.3.1 *Overlooking:*

On my site inspection I noted a number of serious concerns regarding the proposed layout and its context to the existing dwellings backing onto the subject site along the western site boundary. The Board should note the subject site is elevated to the rear of the existing dwellings along the western axis. The existing dwellings are setback deep into their curtilages and backing up onto the site at a lower ground level leaving their rear windows and yard areas exposed. The permitted scheme includes for 3 No. J type dwellings on sites 17, 18 and 25, which is a gable fronted single storey dwellings. In two of the dwellings the front doors are directly overlooking adjoining properties. A 2metre wall is proposed on the subject site between the properties, and although this should provide limited screening, no clear cross sections have been provided that correspond with the layout drawing. In my opinion, because the impact is significant, a visual perspective from the adjoining properties should have been provided with the application documentation.

This is a suburban location, and a certain level of oblique overlooking of private rear gardens is to be anticipated within residential areas, having regard to the design, proximity to and elevated nature of the site, the impact of the proposed dwellings will be oppressive when viewed from the adjoining properties and will result in an undue loss of privacy, and serious injury to existing amenities.

7.3.2 **Overbearing**

The third parties consider the overall height to be excessive, and it will create overbearing impact when viewed from their properties in particular main rear windows of their homes. The full extent of the proposed cutting into the subject site is not clear from the submission documents to achieve the ground levels proposed. I submit, the site is not located in a highly sensitive landscape or architectural streetscape. The predominant height of the proposed development is two storey dwellings (8.5metres). The development reduces in height along the western boundary to 5.7metres, however it is positioned on a higher ground level that has not been demonstrated along all of the adjoining properties to the west.

The adjoining single storey dwellings are 5-10metres from the subject site boundary. On site No. 18 the proposed dwelling is only 1metre from the communal site boundary. Having examined the subject site from the adjoining properties, I would consider the proposal to be overbearing and oppressive when viewed from the contiguous dwellings, as described by the appellants. The section drawings do not adequately illustrate the relationship of the proposed development to the adjoining dwellings including overlooking potential and overshadowing potential.

Given the orientation, the configuration of adjoining curtilages and setbacks from adjoining properties, the level of overshadowing resulting from the proposed development should have been assessed in greater detail by the applicant.

Loss of Daylight/Sunlight/Overshadowing:

The provisions of BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting) and BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011) are relevant in the assessment of this development. The document is referenced in Section 28 Ministerial Guidelines on Urban Development and Building Heights 2018. While I note and acknowledge the publication of the updated British Standard (BS EN 17037:2018 ‘Daylight in buildings’), which replaced the 2008 BS in May 2019 (in the UK), I am satisfied that this document/UK updated guidance does not have a material bearing on the outcome of the assessment.

I have also carried out a site inspection, considered the submissions received that have raised issues in respect of potential impact on their houses and properties as a

result of overshadowing/loss of sunlight/daylight and reviewed the planning drawings relating to the properties to the south and west of the appeal site.

There was no Daylight Analysis and Overshadowing report prepared as part of the planning documentation by the applicants. The proposal may comply with BRE209 requirements due to the orientation of the site relative to existing adjoining properties. I am not satisfied that due to the building lines and lack of separation distances and the orientation of the proposed development east of existing dwellings, the proposed development may have an overshadowing impact on existing properties and their associated amenity spaces.

7.3.3 Agricultural Access

Condition No. 1 (c) states:-

The 2No. agricultural access, located south of dwelling No. 1 and to the north-eastern corner of the site, indicated on revised site layout 120th of May 2021 are expressly omitted from the permission. The area to the north east, adjoining the south eastern boundary of the apartment block shall be incorporated into the private amenity space associated with the apartments, the remainder of the open space areas shall be suitably landscaped.

The subject site is part of a farming landholding. There is currently a livestock shed beside where proposed dwellings No.s 1 and 2 are positioned on the site layout drawings. The planning documentation states the subject access road is to be shared with the landowner to maintain access to the landholding. Whilst I accept that in principle, I do not agree with the layout of the estate in particular adjacent to the apartment block, there could be potential conflicts due to the completely different land uses. I consider the layout to be substandard in providing reasonable access to the landholding and this issue needs to be reconsidered. I do not agree with the planning authority's condition to omit both access points as this will create a landlocked agricultural holding. This issue requires further design with particular emphasis on the amenities of future residents, and due to outstanding issues relating to the overall layout, it is my opinion the issue cannot be rectified by way of condition.

7.4 Traffic/ Parking

The existing access to the site/ farm is located between two existing dwellings directly off the Regional Road (R680) within the 60kmph speed limit. There is a low

wall fronting the access to the site at the present time that will be removed to provide a splayed entrance. There is also a 2metre wide footpath fronting the site. There is a gradient into the site which is not significant and will enable trucks to enter the site easily. The entrance road and access will be widened to provide sufficient Fire and Bin truck access. The front boundary wall will be a low selected brick finish wall.

The sightlines are adequate in both directions at the entrance. The Regional Road is straight fronting the site with considerable setback from the edge of the road. Carparking provision is in line with development plan requirements.

7.8 Other Matters

Standard Part V conditions are applicable in this case.

The applicant, Michael Guiry, claims to be the landowner of the site on the planning application form. A third-party appellant claims the landowner is his brother Mr. Maurice Power from Youghal. This is a validation issue for the planning authority and beyond the remit of the Board, and it should be noted the planning authority validated the application.

Furthermore the right of way to access for the residual landholding remains outstanding on the application documentation.

The surface water network has been designed to restrict the potential flow rate of surface water egress in the site and discharging to the tributary at Whelans Bridge River to 7.33litres/ second to the green field flow rate. There are 2No. filter drains proposed to collect surface water into 3No. attenuation tanks prior to entering the onsite surface water pipe network, which shall include hydrobrakes.

7.9 Appropriate Assessment

The Natura Impact Statement submitted on the 20th of May 2021 is noted. The surface water run off will discharge to a tributary to the Whelan's Bridge River south of the site, which has a hydrological link to a section of the Lower River Suir SAC. Site code 002137. The proposed development has the potential to cause potential impacts to freshwater dependent Qualifying Interests species

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Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260]

Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]

Austropotamobius pallipes (White-clawed Crayfish) [1092]

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra planeri (Brook Lamprey) [1096]

Lampetra fluviatilis (River Lamprey) [1099]

Salmo salar (Salmon) [1106]

Lutra lutra (Otter) [1355]

Construction Phase

During the construction phase there may be potential for the release of silts, hydrocarbons and cementitious material via surface water run off from the site to the Whelans' Bridge river via a tributary at Kilmeaden. Mitigation measures outlined in the NIS (page 23) are taken from established best practice guidelines, and include the use of settling ponds, silt traps, filters and pumping of water, etc

Operational Phase

The main potential during the operational phase is due to the spillage of stored hydrocarbons in overground tanks. There may be leachate from surface water run off on roads and roofs via the pathway to the stream across the R680 Regional Road. Therefore the installation of silt/grit traps, oil interceptors 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 the conservation objectives of any European site.

8.0 Recommendation

Although the proposed development is in keeping with the zoning objective to provide a residential development on these serviced lands, it is submitted the overall development fails to adequately respond to its elevated context or integrate successfully with the immediate and surrounding built environment. I have serious

reservations regarding the potential negative impacts to the existing amenities of adjoining properties.

9.0 Reasons and Considerations

Having regard to the difference in ground levels and lack of separation distance between the existing and proposed dwellings, it is considered the scale, design and layout of the proposed development, it is considered the proposed development would be highly oppressive when viewed from the contiguous dwellings, would seriously injure the residential amenities of the area by reason of overlooking, and would fail to adequately respond to its elevated context or integrate successfully with the immediate and surrounding built environment. The proposed development would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

20/10/2021