



An
Bord
Pleanála

Inspector's Report

ABP-310936-21

Development	Subdivision of residential site to provide for the construction of a new detached dwelling with parking, landscaping, boundary treatments, new entrance and driveway, new foul and water main connection to existing public drainage and ancillary site works.
Location	Oaklands, Riversdale Island Lane, Dunmore Road, Waterford, X91 Y6WK
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	20916
Applicant(s)	Orna Hoban
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Seamus Walsh
Observer(s)	None
Date of Site Inspection	7 th October 2021
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The subject site forms part of a large residential site that has an address at Oaklands, Island Lane, Dunmore Road, Waterford, X91 Y6WK. The wider grounds accommodate 2 no. single-storey stable buildings to the east, which are associated with the existing two-storey detached house ('Oaklands'). These buildings form part of the appeal site and are intended to be demolished, and replaced, by the proposed, new dwelling.
- 1.2. There is an existing vehicular access and private, gated entrance that leads off Riversdale Island Lane, which is to the west. The driveway is meandering, slopes upwards and leads to the front of the existing house. The appeal site is located a short distance south of the top of the driveway. There is a car parking area and domestic garage situated between the existing dwelling and appeal site.
- 1.3. There are dense semi-mature, and mature, trees, hedges, and shrubs both on and around the periphery of the site, particularly on the northern and western site boundaries. The land slopes generally upwards from west to east, and the existing house and location where the proposed, new dwelling is intended to be constructed (i.e. the appeal site) are on higher ground.
- 1.4. The site is situated within the suburbs of Waterford City. Waterford Hospital is approximately 800m to the northwest. The wider surrounding area is characterised by a mix of mainly low-density, detached and semi-detached housing.
- 1.5. The site has a stated area of approximately 1,035 sq m.

2.0 Proposed Development

- 2.1. The proposed development is for the subdivision of an existing residential site and construction of a 2-storey, detached dwelling with parking, landscaping, boundary treatments, new entrance and driveway, new foul and water main connections to existing public drainage and ancillary site works.
- 2.2. The Planning Authority requested Further Information on 4th February 2021, including in relation to: clarification as to whether demolition works were required to accommodate the new, proposed development (together with the submission of revised public notices); the potential removal of trees, preparation and submission of

cross and longitudinal section drawings through the site showing the proposed finished floor levels and ridge height of the proposed house (relative to the existing adjoining dwellings to the east); the method of surface water disposal; details of foul water disposal and a copy letter from Irish Water indicating Feasibility Agreement; and revised boundary treatments for the proposed access road / driveway extension.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission on 29th June 2021, subject to 10 no. conditions. The conditions are mainly standard in nature. Notable conditions include the inclusion of frosted / opaque glazing at the first floor ensuite / bathroom windows on the north-eastern elevation of the house (Condition no. 2), and the preparation of a Construction and Demolition Management Plan (Condition 9).

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The site is zoned as 'Existing Residential' as per the Development Plan. The proposed development, therefore, would not conflict with the relevant zoning objective for the lands.
- The proposed development is not considered to have any potential negative amenity impacts on the adjoining properties. The proposed dwelling would be approximately 11m from its northern boundary with an adjoining residential property. The closest room of the proposed dwelling would be the first floor window in the north-eastern elevation of a bathroom, which could be conditioned to have frosted / opaque glazing.
- The Applicant confirmed as part of further information that no trees would be removed on foot of the proposed development.
- A Soakaway Calculations Report was submitted as part of further information, which was reviewed by the Council's Water Services Section and considered to be acceptable (i.e. issue considered to be resolved, subject to conditions).

- The proposed drainage and water main would only traverse family lands and exit the site at an existing wayleave agreement location. The Council's Water Services Section considered this to be acceptable. The Applicant also submitted a Pre-Connection Agreement enquiry with Irish Water, which was responded to, and indicates feasibility of connection to services.

3.2.2. Other Technical Reports

- Environment and Water Services: No objection, subject to conditions.
- Heritage Officer: No objection, subject to conditions.

3.3. Prescribed Bodies

- Department for Culture, Heritage, and the Gaeltacht: No response received.

3.4. Third Party Observations

A total of 2 no. third party observations were received by the Planning Authority from residents in the surrounding area. The main issues raised can be summarised as follows:

- Land landownership.
- Extent of wayleave that facilitates the proposed sewer connection is unclear.
- Amenity impact caused by proposed development overlooking nearby houses.
- Existing foul sewer arrangement needs to be clarified as it may impact third parties.
- Proposed timber fencing boundary treatment should be replaced with a softer boundary treatment.
- Tree protected measures on site mature trees should be implemented in a situation where permission is granted.
- Proposed, newly planted trees should have a maximum height.

4.0 Planning History

There is relevant planning history in relation to the subject site, which is summarised as follows:

Reg. Ref. 13500090: Application submitted on 19th September 2013 for 32 no. dwellings and associated site development works. Application deemed withdrawn.

Reg. Ref. 13500082: The Planning Authority granted an extension of duration on 22nd October 2013 for Reg. Ref. 07500241 (see below).

Reg. Ref. 07500241: The Planning Authority granted permission on 15th October 2007 for 38 no. dwellings and associated site development works.

5.0 Policy Context

5.1. Waterford City Development Plan 2013 - 2019 (as extended and varied)

The site is zoned 'Existing Residential' under the Waterford City Development Plan 2013 - 2019 (*as extended*) ('Development Plan') which seeks *"to protect and improve existing residential areas and their amenities and provide for appropriate residential infill opportunities where feasible"*. A residential use is listed as normally permitted under this zoning objective.

The site is subject to several 'Trees of Amenity Value' designations, which are prevalent both within, and near the boundaries of, the site.

5.2. Natural Heritage Designations

No designations apply to the subject site.

The nearest European Site is approximately 200m to the north, which is the Lower River Suir Special Area of Conservation (SAC) (Site Code 002137).

5.3. EIA Screening

Having regard to the nature and small scale of the proposed development, which consists of a single dwelling located in a fully serviced, urban area, and its proximity to the nearest sensitive location, there is 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

A Third Party Appeal was received from Seamus Walsh (Killandrew, Mullinavat, County Kilkenny). The main grounds of appeal can be summarised as follows:

- The Appellant does not object to the proposed development in principle. However, they state that a strip of land through the woodlands to the north of the site was incorrectly represented in the Applicant's ownership.
- The Council sought further information from the Applicant; but did not require her to prove full legal ownership of the application site and landholding. (Appellant observes that the Planning Authority's Request for Further Information is not correctly scanned and recorded on the Council's website, and that a further information request relating to a completely different application (Reg. Ref. 20/916) is incorrectly recorded against the subject application instead.)
- The Council Planner's Report noted the third party submission made by the Appellant querying the issue of ownership, and stated that this is a civil matter. The Planning Authority were satisfied that the Applicant had indicated clear ownership of a proposed site access on the submitted plans and particulars, and that the proposed access arrangement was deemed to be acceptable.
- The Appellant states that land ownership can be civil matter, but also a material planning consideration. [The Appellant is also currently in legal proceedings with the Applicant in respect of a claim of land ownership.]
- Written consent is required from the Appellant to apply for planning permission, but this has not been provided. Without this, there is no permissible access to the proposed dwelling.

- The Board is requested to seek proof of full, legal ownership of the application site, landholding and right of way from the Applicant.
- The Board is also requested to consider issues relating to potential overlooking, boundary treatments, and tree protection measures.

6.2. Applicant Response

The Applicant lodged an Appeal Response on 24th August 2021, which includes the following main points:

- The appeal submission includes an enclosed letter from the Applicant's solicitor, which confirms legal ownership of the application site.
- The Appellant has stated that they do not object to the proposed development, as such, and does not disclose any further planning based observations (other than those already raised in their original submission to the Planning Authority).
- The appeal submission does not focus on the relevant issues of proper planning and development.

6.3. Planning Authority Response

- None received.

6.4. Observations

- None received.

7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Land Ownership
- Residential Amenity
- Appropriate Assessment

7.1. Land Ownership

- 7.1.1. The Appellant does not object to the principle of development on the site, and it is confirmed in their appeal submission that they have made previous observations on the layout, design, and servicing of the proposed dwelling. The main appeal issue, therefore, is primarily concerned with land ownership.
- 7.1.2. The appeal states that the plans and particulars submitted with the planning application are incorrect, and that a strip of land at the northwest part of the site is inaccurately represented as being within the Applicant's ownership.
- 7.1.3. A photocopy of a land registry map is appended to the Appeal, which purports to be land owned by the Appellant. The map shows that the area of land near the access to the site, from Island Lane, is within their ownership. The map is at odds with the plans and particulars submitted as part of the planning application, including the Site Location Map (1:2,500 scale drawing), which denotes that the Applicant owns this strip of land, by way of being included in the blue line boundary.
- 7.1.4. The Applicant's Response includes a solicitor's letter, prepared by Kenny Stephenson and Chapman Solicitors (dated 24 August 2021), which is appended by two separate Deeds of Grant of Right of Way and a Land Registry Map. The information shows that it is Applicant who owns the area of contested land, next to the site entrance, and not the Appellant.
- 7.1.5. Whilst there is clearly an ongoing legal dispute in relation to the matter of land ownership and property rights, the Board cannot adjudicate on such a matter. In this regard, I note the provisions of Section 34(13) of *Planning and Development Act, 2000* (as amended) relating to 'Permission for Development', which states that "*a person shall not be entitled solely by reason of a permission under this section to carry out any development*". Therefore, in the event permission is granted, there may be other legal considerations that apply, and which the landowner may need to address outside of the planning system.
- 7.1.6. I note that the Applicant's Response also includes commentary on an ongoing High Court action. However, this also is considered outside the remit of this appeal assessment.

7.2. Residential Amenity

- 7.2.1. The Appellant requests that certain planning considerations relating to the proposed development be reviewed, including potential for overlooking, proposed boundary treatments, and tree protection measures.
- 7.2.2. The proposed dwelling is located a sufficient distance away from adjoining residential properties to ensure the issue of overlooking is not a significant concern. The nearest dwelling is No. 6 Kingswood, which is to the northeast, and would be roughly 34m from the proposed dwelling at its nearest point. I note also that the proposed dwelling would be roughly 11m from its northern boundary, and that the adjoining site is part of the wider grounds associated with Oaklands (i.e. within the blue line boundary). The closest first floor room is a bathroom and not a habitable room. In the event permission is granted by the Board, the bathroom window could be conditioned by the Board to have frosted / opaque glazing, which is consistent with the Planning Authority's Decision (Condition no. 2).
- 7.2.3. In terms of proposed boundary treatments, the Applicant has proposed a 900mm high post and rail fence with hedging at the proposed site entrance and along the site's southwestern boundary. Tree planting will also be provided at the southwest boundary. It is proposed to retain the existing post and rail fence at the north-eastern boundary, together with an existing partial hedgerow. It is also intended to plant a supplementary hedge in this area to ensure a continuous hedge is present on the full length of this boundary. In summary, I consider the detail provided by the Applicant on a revised Proposed Site Layout Plan – provided as further information – sufficient and appropriate with regards to proposed boundary treatments.
- 7.2.4. It is noted that there are no mature trees present in the vicinity of the proposed dwelling. The Applicant has also confirmed that no trees will be removed due to the proposed development. The Board may wish to include a tree bond condition on any grant of permission issuing given the site is subject to several 'Trees of Amenity Value' designations. However, I consider that it is in interests of the Applicant to retain and protect the trees onsite, so that including such a condition would be unnecessary.

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 Waterford City Development Plan 2013 – 2019 (as extended), and the relevant land use zoning objective that applies to the site ('Existing Residential'), which seeks to protect and improve existing residential areas and their amenities and provide for appropriate residential infill opportunities where feasible, 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>The window at the first floor ensuite / bathroom at the northeastern elevation of the proposed dwelling shall consist of frosted or opaque glazing.</p> <p>Reason: In the interests of residential amenity.</p>

3	<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>
4	<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>
5	<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 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>

Ian Boyle
Planning Inspector

20th October 2021