



An
Bord
Pleanála

Inspector's Report ABP-311758-21.

Development	7 no. detached houses
Location	Fishery Lane, Naas, County Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	21825.
Applicant	Tetrarch Property Investment Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant	Tetrarch Property Investment Ltd.
Observer	None.
Date of Site Inspection	8 th July 2022.
Inspector	Philip Davis.

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1.0 Introduction

This appeal is by the applicant against the decision to refuse permission for a development of 7 dwellings on a site on the outskirts of Naas. The three reasons for refusal relate to its location and density, the quality of public open space, and flood risk.

2.0 Site Location and Description

2.1. Fishery Lane

Fishery lane is a partly upgraded third class road on the north-western outskirts of the town of Naas, about 2.5 km walk from the town centre. It is south of the Mauldins Interchange, the first major junction on the M7 entering Naas from the Dublin direction. The lane runs east from the R445 (the former Dublin Road running through the town), connecting to the network of third class roads east of the town on low lying land associated with the Morell (sometimes spelled Morrell) River, a tributary of the Liffey. The lane is just over 1km long. For around half its length it has been upgraded to an urban link road with footpaths, serving the Mauldins Industrial Estate. From the bridge over the Morell River, it is a typical country road, with numerous one-off houses and farms on either side. South of the lane is Naas Racecourse.

2.2. Appeal site.

The appeal site, with a site area given as 2.41 hectares, is an elongated irregularly shaped field of pasture running north from Fishery Lane, with the Morell River separating it from the Mauldins Industrial Estate to the west. Another watercourse, an engineered canalized river, runs along the northern boundary. It has a narrow frontage to the road, with a ditch and mature trees. To the east there are open fields, and a dwelling next to the road immediately adjoining the site. One hedgerow intersects the site. The lands are mostly grazing. The boundaries are mostly high hedges with lines of mature leylandii along the western side. Levels are generally flat, with a slight rise west to east.

3.0 Proposed Development

The proposed development is described as 7 no. detached houses (6 no. 4-bed houses and 1 no. 5 bed houses, including 1.77 hectares of open space, a shared access, foul pumping station and associated site works.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to refuse permission for three reasons, which I'd summarise as follows:

1. It is considered an incongruous form of suburban housing development and would be contrary to national policy and development plan policy (section 14.3.5 of the Naas Town Development Plan) with regards to density and design.
2. The open space design is considered to fail to provide for high quality useable space and as such is contrary to section 13.3.5 of the Naas Town Plan.
3. It is considered that it fails the justification test for building on a floodplain.

4.2. Planning Authority Reports

4.2.1. Planning Reports

There are two planning reports on file, one subsequent to a request for further information.

- Notes the partial location within Naas town zoned area, but that it is zoned Greenbelt in the draft Naas LAP. The proposed development is considered premature pending the adoption of an LAP for Naas.
- Notes that a Strategic Flood Risk Assessment (SFRA) report has been carried out for the area.
- The density is considered to be well below the acceptable parameters set out in the existing Naas and Kildare County Development Plan.
- The open space provision is considered to be poorly laid out and designed.

- The site is located on lands subject to a site-specific flood risk assessment. It is in an identified flood zone for the 0.1% AEP events. It is noted that compensatory storage is proposed on the site. It is considered that this level of intervention is excessive.
- An AA screening concluded that there would be no impact on the integrity of the Natura 2000 network.
- Noted that there is an application for Part V exemption.

A request for further information was sent out.

- Subsequent to the above, it is noted that the applicant did not provide revised proposals, but justified the application by way of housing need in the area. A landscaping masterplan was submitted and an archaeological impact assessment in addition to an ecological assessment.
- It is concluded that the response is inadequate in that it appears to address the Naas Town plan rather than the draft LAP. It is considered that the landscaping plan is not acceptable to address the design issues with the open space.
- It is concluded that the level of intervention required to accommodate the units appears excessive with respect to flood risk mitigation, in regard to Chapter 5 of the Flood Risk Management Guidelines.
- Refusal recommended – three reasons.

4.2.2. Other Technical Reports

Environment: No objection subject to conditions.

Water Services: Concerns set out, requests further information.

Housing: Further information sought.

Environmental Health Office: No objections

Chief Fire Officer: No objections.

4.3. Prescribed Bodies

Irish Water – seeks further information.

4.4. **Third Party Observations**

One submission requesting certain items to be addressed, in particular with regard to road design and traffic.

5.0 **Planning History**

06/500214: Permission refused for development on the site for 20 dwellings.

06/2433: Permission refused for 20 dwellings.

6.0 **Policy Context**

6.1. **Development Plan**

The site is partially within the Naas town area (Naas Town Development Plan), and partly unzoned agricultural land. The area within the town is zoned Objective B 'Existing residential infill'.

Since the decision made by the planning authority the Naas Local Area Plan was adopted in December 2021. In this plan the lands are zoned 'G' Greenbelt, specifically part of the greenbelt between Naas and Johnstown to the north.

6.2. **Natural Heritage Designations**

The closest EU Natura 2000 habitats are **The Red Bog SAC, 000397**, some 8 km to the east. The **Poulaphouca Reservoir SPA, site code 004063** is some 10km distance. The adjoining river runs to the River Liffey, which discharges to Natura 2000 sites in Dublin Bay. The Grand Canal pNHA is less than 5km to the north-west.

6.3. **EIAR**

Having regard to the nature of the proposed development, its relatively small scale and the edge an existing urban area, and the absence of any sensitive receptors in the immediate vicinity, the development would not result in a real likelihood of significant effects on the environment. The need for environmental impact

assessment can, therefore, be excluded and a screening determination is not required.

7.0 The Appeal

7.1. Grounds of Appeal

- It is emphasised that the site is zoned for residential development (existing residential/infill), and it is argued that the design and layout is not 'suburban' as stated in the planners report, but represents an appropriate response to the nature of the area.
- It is noted that in Naas Town Development Plan (NDTP) it is stated that in 'transitional areas' abrupt transitions in scale and use should be avoided (section 14.3.5).
- It is noted that the 2009 Sustainable Residential guidelines permit low density developments in certain circumstances. It is argued that these circumstances pertain to this transitional site.
- With regard to the second reason for refusal, a landscape masterplan (18th August 2021) is submitted with the appeal. It is argued that this masterplan addresses all issues raised in the reason for refusal.
- With regard to Reason no.3, it is noted that the Flood Risk Assessment submitted noted that the residential elements are outside of the predicted flood zone, up to a 0.1% AEP event. It is noted that the KCC Water Services Department report made no reference to flood risk.

7.2. Planning Authority Response

- It is stated that the design is not considered an acceptable response to its zoning designation. It is also noted that the Naas LAP came into effect on 01/12/2021, and the lands are now designated as 'greenbelt'.
- It is argued that with regard to open space, the proposed development does not fully achieve the 12 criteria set out in the Urban Design Manual.

- It is stated that the level of mitigation required to protect the dwellings is excessive and it does not satisfy the Justification Test as set out in Chapter 5 of the Flood Risk Management Guidelines for planning authorities.
- The planning authority concludes that the proposed development is unacceptable for the above reasons.

8.0 Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following general headings:

- Local context
- Principle of development
- Design and layout
- Amenity
- Flooding and drainage
- Appropriate Assessment
- Other issues.

8.1. Local context

The site is located in an area of late 20th century urban expansion along what was the Dublin Road on the northern side of Naas. Fishery Lane is a former minor country road extending west from the R445, which has become the boundary between a large industrial estate (the Maudlins Estate) to the north and Naas Racecourse to the south. This area appears to have been originally marshland drained in the 18th or early 19th Century. The industrial estate extends up to the junction of the R445 with the M7 (formerly Naas bypass) at Johnstown. There are a small number of residential dwellings that have been built close to the industrial estate. The Morrell River has become the *de facto* boundary between Naas and the rural areas to the west – this part of Fishery Lane is characterised by open fields and a discontinuous linear developing of individual dwellings from various periods.

The road changes from having a footpath to being a typical country road at the Morrell River bridge.

While the river is an obvious natural boundary for the town, this has only been formally recognised in the most recent LAP – previously the Naas boundary was a circle around the town centre, which happened to intersect the site leaving it with a somewhat ambiguous and not particularly logical status.

Notwithstanding the proximity of the urban area, I consider that the river is a natural boundary, and as such the area is essentially rural in nature and as such urban or suburban density development is generally inappropriate. The proposed low density suburban design and layout would significantly reduce the amenity of this area (already suffering from an element of sprawl and heavier traffic than would be normal on a rural road). While the applicant argues that a ‘transitional’ development of detached dwellings would be an appropriate design solution for such an urban fringe, I do not consider that this approach is supported by either the objectives of the development plan or national planning policy.

I therefore concur with the conclusion of the planning authority that it is an inappropriate form of development on this site and contrary to guidance.

8.2. Principle of development

The proposed development is in an area that is intersected by the Naas town boundary in the Naas Town Development Plan. As of the 1st December 2021, this Plan has been superseded by the NAAS Local Area Plan 2021-2027. The site is within the town boundary as defined in this plan. In the LAP it is zoned as G ‘Green Belt’, with an indicator for flood risk assessment. The objective of this zoning designation is *‘to maintain the settlement character and protect, from inappropriate development, the greenbelt between Naas and Johnstown’*. In such areas, rural housing is considered ‘open to consideration’ subject to Rural Housing Policy as outlined in the KCDP.

In the ‘Green Infrastructure Corridors Map’ the site is identified as a key link on the Morell River. Section 7.3.1.8 of the plan states that while the river has been highly modified, but it is considered important to ensure its protection.

The previous zoning designation covered about half the site (the outer part of the site was outside the plan area and as such unzoned agricultural land'. It was identified as 'B', Existing/infill Residential'. The zoning objective for that area was stated as *'to preserve and improve residential amenity and to provide for further infill residential development at a density that is considered appropriate to the area'*.

There is a clear presumption against residential development (except rural housing in accordance with the provisions of rural housing policy in the KCDP) on the site in the current LAP. It was more ambiguous in the previous plan as the site does not seem to accord with the normal description of an 'existing' or 'infill' site. The area is very much rural in nature across the river, albeit with many individual rural houses. Having regard to national guidelines on density, I do not consider that it would have been reasonable to see the site as appropriate for the type of very low density suburban housing proposed. There is nothing within the previous or current plan to justify an exception to the normal density guidelines for urban areas.

I would conclude that the applicable development plan for the site is the 2021 LAP, but even with regard to the previous Plan, I do not consider that such a low density proposal is consistent with the objectives of the plan, or the wider objectives of regional and national policy.

8.3. Design and layout

The proposed development consists of seven detached dwellings in the southern half of the site. One dwelling faces the road, the others are aligned on the eastern side of a service road running north from Fishery Lane. The northern half of the site is identified for amenity meadow and open grass play area. The dwellings generally have orientation on an east-west axis, giving good light to the rear gardens during the day and the fronts in the evening, although house no.1 would probably have a shaded rear garden with minimal direct sunlight.

Internally, I consider that the dwellings would have a high quality of internal amenity and would not interfere with each other by way of overlooking or overshadowing or loss of privacy. There is sufficient separation distance to ensure there would be no impact on any adjoining properties.

The planning authority considered the landscaping scheme to be inadequate, but I would consider the masterplan submitted on the 31st August 2021 to be of a generally good standard.

8.4. **Flooding and drainage**

The appeal site is partly within 'Flood Zone B – 1% AEP Flood event (1:1000 chance of flooding in any given year). There are no records of previous floods on the lands. The river at this point does not follow a particularly natural course –older Ordnance Survey plans indicate the overall area was drained by the early 19th Century.

The Flood Risk Assessment in the LAP states that within Flood Zone B areas a Justification Test is required for 'highly vulnerable' development, but the site is appropriate for 'less vulnerable' development. Dwelling houses are included under the definition of 'highly vulnerable' development (Table 3-3 of the Flood Risk Assessment). The applicant notes that the dwellings are outside the identified B area – the scale of the plans make it difficult to identify the precise area that is identified, but it is clearly a significant proportion of the western side of the site.

I would concur with the concerns of the planning authority that the overall design implications of flood protection has not been adequately addressed.

Notwithstanding this, as much of the site is not within Flood Zone B I would consider that with an appropriate Justification Test and appropriate design, the site is not in principle unacceptable for residential development.

8.5. **Appropriate Assessment**

The closest EU Natura 2000 habitats are **The Red Bog SAC, 000397**, some 8 km to the east. The **Poulaphouca Reservoir SPA, site code 004063** is some 10km distance to the east. The Morell River runs north to the River Liffey, which discharges to Natura 2000 sites within Dublin Bay. The Grand Canal pNHA is less than 5km to the north-west.

The appeal site is at the edge of an urban area and adjoins a watercourse, the much altered and drained Morrell. There is a drain along the northern boundary, but no

watercourses crossing within the site. The site is fully serviced for drinking water and wastewater.

The designated habitats within 10 km are all associated with wetlands but are not in hydraulic continuity within the site. The land is grassland and appears heavily grazed. There are no structures on the site that could have breeding bat species – much of the hedgerows are leylandii. There are some native hedgerows along the southern and northern boundary. Development on the site could impact on the Morrell if inappropriately carried out, but due to the attenuation between the site and the Dublin Bay habitats I do not consider that there is any possibility of a downstream effect. Underground sewage and water services run through the site, but these connect to permitted and managed facilities. The planning authority carried out a screening and concluded that there would be no adverse impacts on the qualifying interests of any of the Natura sites. I concur with this conclusion.

I have examined the screening in the context of my site visit and other available sources of habitat and environmental data and I am satisfied that it includes sufficient information to allow the Board to carry out a complete assessment of all aspects of the project. I am therefore satisfied that a conclusion of no adverse effects can be reached. I am therefore satisfied, that the proposed development, in itself or in combination with other plans or projects would not be likely to have a significant effect on the integrity of European sites no.00379 or 004063, or any other European site, in view of these sites Conservation objectives and thus a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 Recommendation

I recommend that the Board uphold the decision of the planning authority to refuse permission for the proposed development for the reasons and considerations set out in Section 10 below. I conclude that the proposed development is contrary to both the development plan at the time of the application and the current Naas LAP and associated national guidance. I consider this to be the substantive reason for refusal – the open space design and floodplain reasons can be addressed by condition if the Board is minded to grant permission.

10.0 Reasons and Considerations

Having regard to the location of the site on the eastern side of the Morrell River, within lands partially designated as 'existing residential' in the Naas Town Development Plan 2011-2017 and as 'G', Greenbelt in the Naas Local Area Plan 2021-2027, it is considered that the proposed development would be contrary to the zoning designation and related objectives of the current development plan for the area and would injure the residential amenities and character of the area by way of its low density and suburban layout. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Philip Davis
Planning Inspector

3rd August 2022