



An
Bord
Pleanála

Inspector's Report

ABP-312122-21

Development	Sub-division of site for construction of maisonette, comprising 2 apartments, and associated site works.
Location	74 Millfield Manor, Moorefield, Newbridge, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	20/1421
Applicant(s)	Alan Cunniffe.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Eve O'Reilly Reddy.
Observer(s)	Click here to enter text.
Date of Site Inspection	22 nd February 2022.
Inspector	Lucy Roche

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1.0 Site Location and Description

- 1.1. The subject site is located within Millfield a large residential development situated c1km southwest of Newbridge Town Centre. It has a stated area of 0.052ha.
- 1.2. The subject site comprises No.74 Millfield Manor, a two and a half storey end-of-terrace dwelling (stated GFA125sqm) and its curtilage (side and rear garden). The site / garden boundaries of no.74 are defined by block wall of c2.2m in height. The lands to the front(east) of no.74 comprise a privacy strip and public footpath, adjacent to the estate road and parking. The property faces onto an area of public open space with extends to the side (south) of the property.
- 1.3. The site is bounded to the west by public open space associated with the residential development 'The Village'. A further area of public open space associated with the residential development of 'Beechmount' is located to the south of the appeal site.

2.0 Proposed Development

- 2.1. Permission is sought to sub-divide the existing site associated with 74 Millfield Manor and to construct a two and a half storey end of terrace maisonette unit to the side (south) of no.74.
- 2.2. The proposed maisonette comprises a 2-bed apartment at ground floor level (stated GFA80sqm) and a 2-bed apartment on the upper floors (stated GFA102sqm). Both apartments are to be accessed from the side (south) elevation, the design of which also incorporates a number of windows and double door with Juliet balcony off the first floor living area serving apartment 2. A section of the existing boundary wall to the south of the property is to be lowered to 1.0m.
- 2.3. The application also includes proposals to alter the existing footpath and road to front of house to incorporate a new car parking space.
- 2.4. The proposed development is in lieu of Planning Reference 13/1049

3.0 Planning Authority Decision

3.1. Decision

Kildare County Council, by Order dated 16/11/2021, recommended that permission be granted subject to 11no. conditions. The following conditions are of note:

Condition 3: Prior to the commencement of any development on site, pursuant to this permission, the developer shall submit documentary evidence in the form of relevant letters of consent, for the written agreement of the Planning Authority that demonstrate the developer's legal entitlement to complete all permitted works, including works to footpaths and the provision of additional car parking space(s).

Reason: in the interests of proper planning and sustainable development

Condition 10 Security of €4,000

Condition 11 Development Contribution under Section 48 of the P&D Act

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planning Report Signed 19/01/2021

- They consider the proposed development to be acceptable in principle and generally in accordance with the Sustainable Urban Housing Design Standards for New Apartments.
- They consider that the design to be in accordance with neighbouring dwellings and that it would not negatively impact visually on the existing grain of development within this scheme.
- They do not consider, having regard to the mix of unit types within the residential scheme, that the introduction of 2 bed units is at odds with adjoining properties.
- They note that 1 additional car parking space is proposed which is less than the recommended CDP standard but that the Apartment Guidelines allow for

a relaxation in standards. They note that no letter of consent for the works has been submitted.

- Further information was requested on the following:
 - The submission of documentary evidence of ownership of the subject site or consent from registered owners
 - The submission of proposals for additional parking within the redline site boundary
 - The provision of electric car charging points/sockets
 - Details of boundary treatment

Report in response to further information 12/11/2022

- They note that the applicant has failed to submit a letter of consent and that Section 34(13) of the Planning and Development Act cannot be relied upon this instance as it is material to the satisfactory completion of the proposed development. They consider that this issue can be addressed by way of condition.
- They note the applicant's opinion that an additional car parking space would detract from the visual amenity of the area and that based on current car ownership the space is not required. They consider this response acceptable having regard to the recommendation of the Transport department.
- They note the applicant's opinion that the need to provide EV charging would be onerous.
- They note the submission of proposals for the provision of a timber post and panel fence.
- They recommend that permission be granted subject to condition

3.2.2. Other Technical Reports

Water Services (08/12/2020)	Recommends 2no. conditions relating to connection to public services and management of surface water.
MD Engineer (08/01/2021)	No objection subject to conditions

Heritage Officer (17/12/2021)	No objection
Environment (15/01/2021)	No objection subject to conditions
Roads (15/01/2021):	Further information requested
Roads (26/10/2021):	No objection subject to condition

3.2.3. Prescribed Bodies

Irish Water (15/12/2021)	No objection subject to condition
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3.3. **Third Party Observations:**

The planning authority received a number of submissions during the course of their determination of this application. These submissions have been grouped and are summarised below:

- Impact on existing residential amenity
 - Overlooking,
 - disruption during construction
 - the applicant does not reside in the estate and will not be impacted
- The proposed development would not provide an adequate level of amenity for future occupants with reference to private open space
- The proposed development is reliant on works on common lands outside of the applicant's land holding and on which he has no control / consent
- Concern that the development will be sold for social housing
- Loss of green space
- multi-unit development may jeopardise the taking in charge of the estate
- Multi-unit design is not in keeping with the design and usage of the surrounding area
- additional traffic
- additional pressure on services
- lack of parking

- Existing vacancy in apartment units should be addressed before additional units granted

4.0 Planning History

KCC13/1049 (2013)	Permission granted to sub-divide the site and construct a two and a half storey end of terrace house etc.
KCC19/432(2019)	Approved - Extension of duration of Reg Ref: 13/1049
KCC04/2148(2005)	Permission granted for 200 residential units (mix of apartment, duplexes and houses)

5.0 Policy Context

5.1. Sustainable Residential Development in Urban areas, Guidelines (DoEHLG, 2009):

- 5.1.1. These statutory guidelines update and revise the 1999 Guidelines for Planning Authorities on Residential. The objective is to produce high quality sustainable developments
- 5.1.2. Chapter 5 of the Guidelines deals with cities and larger towns and identifies a number of locations suitable for increased densities, including (d) Inner suburban / infill.
- 5.1.3. Section 5.9(ii) deals with infill residential development, advising that the design approach should be based on a recognition of the need to protect the amenities of directly adjoining neighbours and the general character of the area and its amenities, i.e. views, architectural quality, civic design etc

5.2. Sustainable Urban Housing, Design Standards for new Apartments

These guidelines apply to all development that include apartments. They seek to uphold proper standards for apartment design to meet the accommodation needs of a variety of household types and sizes.

5.3. The Kildare County Development Plan 2017-2023

5.3.1. Section 4.6 Mix of Dwelling types:

MD 1 Ensure that a wide variety of adaptable housing types, sizes and tenures are provided in the county in accordance with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual to support a variety of household types.

MDO 1 Require that new residential developments provide for a wide variety of housing types, sizes and tenures

5.3.2. Section 4.11 Residential Development in Established Urban areas

Urban Infill and Backland Development

The development of underutilised infill and backland sites in existing residential areas is generally encouraged. A balance is needed between the protection of amenities, privacy, the established character of the area and new residential infill. The use of contemporary and innovative design solutions will be considered for infill and backland development and connections to the surrounding area and services should be identified and incorporated into proposals

SRO 1 Encourage the consolidation of existing settlements through well designed infill developments in existing residential areas, located where there are good connections to public transport and services and which comply with the policies and objectives of this Plan

5.3.3. Section 17.4.6 Apartment Developments

5.3.4. The provision of apartment schemes shall only be considered in appropriate locations, at a suitable scale and extent. Primarily this will be in town centre locations and proximate to public transport. While planning applications for apartments shall be assessed against the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, DECLG (2015), the Council strongly

encourages the provision of apartments above these standards, in the interest of building attractive living environments and creating sustainable communities.

5.3.5. **Section 17.7.6 Car Parking**

Residential: House 2 spaces per unit

Apartment: 1.5 spaces per unit + 1 visitor space per 4 apartments

5.4. **Newbridge Local Area Plan 2013-2019, extended to 2021**

5.4.1. The Newbridge Local Area Plan 2013-2019 identifies that the subject site is located within lands zoned 'B' Existing residential / infill. It is the stated objective for of this zoning

“To protect and improve existing residential amenity; to provide for appropriate infill residential development; to provide for new and improved ancillary services and to protect and enhance the amenity of developed residential communities”

5.4.2. Relevant Policy:

HL 6: To restrict apartment developments generally to town centre locations or suitably located sites adjoining public transport connections. Apartments will not be permitted where there is an over concentration of this type of development. Higher density schemes will only be considered where they exhibit a high architectural design standard creating an attractive and sustainable living environment. Duplex units shall not generally be permitted.

5.5. **Natural Heritage Designations**

The site is not located on or adjacent to any designated site. The Pollardstown Fen SAC & NHA is located c1.6km to the northwest while the Curragh NHA is located c1.3km to the southwest.

5.6. **EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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

- The applicant is not a resident of the estate and has no day-to-day knowledge of the parking problems and associated issues with Millfield
- While not suggesting any inappropriateness or indeed any illegal issues, the submission outlines a sequence of events and makes a number of observations relating to how the land came into the possession of the applicant (a planner and former employee of Kildare County Council), the zoning changing and manner in which permission was attained on site (with reference to PRR13/1049 and the current application).
- The site outlined in red on the site layout plan does not match that detailed on the site location map.
- The land outlined in red extends outside of the applicant's ownership boundaries, which should be coloured blue and should also include the written permission of the landowner (Millfield Manor Management Company). As consent has not been given, the application should have been invalidated. Reference to planning Law provided.
- The permission granted, in particular condition 3, is dependent on the cooperation of a third party (Millfield Manor Management Company) which is not forthcoming. The permission is not enforceable and therefore null and void
- Devaluation of property
- The proposal will amend the housing tenure in the area
- Lack of car parking in the area and failure of the applicant to provide sufficient parking to serve the proposed development.

- The applicant failed to adequately address the issues raised in the further information request
- Loss of greenspace

6.2. Applicant Response

- They consider that a number of defamatory allegations have been made by the appellant.
- They note that vast sections of the appellants original letter of objection were redacted but that an unredacted version has been included with the grounds of appeal. They query whether the appeal can be considered on this basis.
- They resided in the property at 74 Millfield for in excess of a decade
- PRR13/1049 was applied for under the applicant's partners (now wife) name which was perfectly legal and immaterial to this appeal
- The additional parking space proposed was granted under the application PRR13/1049. This was prior to the establishment of Millfield Management company.
- Parking has never been an issue – there is presently a surplus of parking in the area of Millfield. The proposed development would result in 13units served by 2.15 parking spaces per unit.
- The family who resides in no.74 have one car. The 2no apartments will generate a requirement for 2no spaces
- Permit parking has been introduced which has had the desired effect of removing uninsured / parked up / old cars from taking up spaces
- They invite the board to consider omitting the proposed additional parking space. they are satisfied that no further consent would be required. A condition restricting one space per unit could be considered if necessary.
- They note that a large 4-bedroom house is already permitted on site and that an additional unit would accord with current planning policy

- The zoning of the side garden has never changed – it was zoned residential in 2004 and remains so.
- They note that the third-party appeal has not queried any part of the design or principle of the development.

6.3. Planning Authority Response

- The PA does not consider that the proposed development would set an inappropriate precedent or substantially reduce the area of green space.
- They consider the scale of development to be appropriate to the area and would not negatively impact adjoining or neighbouring property subject to the conditions set out
- The application was assessed on the merits of the information submitted on the file and the PA expects that the Board will do likewise
- With regard to the condition regarding landownership, the Planning Authority notes the guidance provided in the Development Management Guidelines which state “Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. if notwithstanding the further information, some doubt still remains, the Planning authority may decide to grant permission. However, such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under Civil law that he/she has all rights in the land to execute the grant of permission.
- The PA considers the provision of condition no.3 which requires the written consent of the third-party landowner is a sufficient response to ensure the provisions and requirements of Section 34(13) of the Planning and Development Act 2000 (as amended) are met.
- They respectively request that An Bord Pleanala uphold the decision to grant permission subject to the conditions set out in the notification of decision dated 16/11/2021

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the submissions received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional / national policies and guidance, I consider the main issues in this appeal are as follows:

- Whether the principle of apartment development is acceptable at this location.
- Whether the applicant has demonstrated sufficient legal interest in the lands to carry out the proposed works, and
- Whether adequate parking is available or can be provided to cater for the proposed development.

7.1.1. I note that a number of issues raised in the ground of appeal do not relate directly to the development proposed under this application but to issues relating to the applicant, his former employment with Kildare County Council, his acquisition of lands within the appeal site and the zoning of these land etc. I do not however consider that these matters are relevant to the assessment of the development proposed nor do I consider that the Board are in a position to adjudicate on or draw any conclusions in relation to the matters raised. Therefore, in the interests of clarity, I note that the assessment of this appeal shall deal only with those issues considered relevant to the proper planning and sustainable development of the area, having regard to the provisions of the Development Plan and other considerations set out in Section 34(2) of the Planning and Development Act 2000 (as amended).

7.1.2. In light of the above, it is proposed to assess this appeal under the following headings:

- Apartment Development - principle and design
- Procedural and Other Matters
- Parking
- Devaluation of Property
- Appropriate Assessment

7.2. Apartment Development - Principle and Design

- 7.2.1. Permission has been sought for the construction of a maisonette comprising 2no apartments at the end of a row of 11no two and half storey dwellings. The appeal site currently benefits from a grant of permission under KCC Reg. Ref:13/1049 which allows for the construction of a two and a half storey, 4-bedroom dwelling.
- 7.2.2. Having regard to the established use of the site for residential purposes, the objectives of the County Development Plan which seek to encourage the consolidation of existing settlements through well designed infill developments in existing residential area and the residential zoning of the site under the Newbridge LAP 2013-2019 (extended to 2021) which makes provision for appropriate infill residential development, I am satisfied that the principle of residential development is acceptable at this location. I note however, that concerns have been raised in the submissions regarding the appropriateness of introducing apartment units at this location.
- 7.2.3. The proposed development is located within Millfield, a large residential area which offers a variety of house types and tenure, including apartments units, albeit in apartment blocks. Having regard to the established pattern and character of development in the area I am satisfied that the additional of 2no apartment units in the manner proposed would be acceptable in principle and would accord with the objectives of the Kildare County Development Plan 2017-2023 which seeks to ensure that a wide variety of adaptable housing types, sizes and tenures are provided in the county.
- 7.2.4. Following review of the plans submitted I am satisfied that the structure as proposed would, in terms of its design, scale and finish, would be compatible with existing residential units in Millfield Manor and would not appear incongruous or out of place within this setting. I am also satisfied that the residential units proposed would provide for a sufficiently high standard of residential amenity for future occupants having regard to standards set out in The Sustainable Urban Housing: Design Standards for new apartments, Guidelines for Planning Authorities and Section

17.4.6 of the Kildare County Development Plan 2017-2023, while also respecting the existing level of residential amenity afforded to adjoining properties.

7.2.5. The form of structure proposed would I consider be similar to that of a duplex. While I note that Objective HL 6 of the Newbridge Local Area Plan 2013-2019 (extended to 2021) states that duplex units shall not generally be permitted, I consider having regard to the scale and design of the development proposed, its location and its relationship with existing residential units, that this form of residential development would be acceptable in this instance.

7.3. Legal and Technical Issues:

7.3.1. The appellants in their submission note a discrepancy between the redline site boundary, as detailed on the site location map (Drawing No.RSA- 20/37/03) and the site layout plan (Drawing No. RSA- 20/37/02). They also note that the redline site boundary as detailed on the site layout plan (Drawing No. RSA- 20/37/02) includes lands outside of the applicant's ownership, and that consent from the landowner, stated as Millfield Manor Management Company, was not provided. They consider that the application should have been invalidated on this basis.

7.3.2. I note that the issue of land ownership / consent was considered by the planning authority in their assessment of the application and in the making of their decision. The planning authority, by way of further information request, established that the applicant while the owner of No.74 and its curtilage, is not the owner of the lands upon which the proposed parking space is located. As part of their request for further information the Planning Authority requested the applicant to demonstrate that he had sufficient legal interest over the lands to carry out the proposed works, the applicant failed to do so, relying instead on the fact that similar works were granted under the extant permission KCC Reg.Ref:13/1049 and on Section 34(13) of the Planning and Development Act 2000 (as amended) which states that *A person shall not be entitled solely by reason of a permission under this section to carry out any development* . The planning authority however, whilst acknowledging the extant permission, was not satisfied that Section 34(13) could not be solely relied upon in

this instance, they were however satisfied that this matter could be addressed by way of condition. In this regard I note that condition 3 of the planning authority's decision requires the submission of documentary evidence to demonstrate the applicants / developers legal entitlement to complete all permitted works, prior to the commencement of development (please refer to section 3.1 for full details).

- 7.3.3. While I note the approach taken by the planning authority and their reasoning for same, it would appear from the information available that the applicant is unlikely to be in a position to fulfil the requirements of Condition 3 as attached to the planning authority's decision or to provide the additional car parking space proposed. Therefore, while I would consider the provision of an additional car parking space as proposed to be acceptable in principle, I do not consider that it would be reasonable or appropriate to include this condition in any grant of permission. (In the event that the Board is mindful to grant permission).
- 7.3.4. I note that in response to the issues raised in the grounds of appeal the applicant has invited the Board to consider omitting the proposed additional parking space from the proposed development. I would consider this to be an appropriate solution to the issues raised above however in such circumstances I consider it necessary to ensure that adequate parking facilities are available within Millfield Manor to accommodate the proposed development

7.4. **Parking**

- 7.4.1. The application site is located at the end of a row of 11 no. 3 and 4 bed townhouses. These 11 no residential units are served by a row of 28 no communal car parking spaces. Existing car parking provision therefore equates to c2.5 spaces per unit. The car parking standards for residential development as set out in the County Development Plan require the provision of 2 no parking spaces per dwelling unit or 22 no spaces this would result in a surplus of 6 no spaces.
- 7.4.2. The proposed development would result in the addition of 2 no apartment units which would, as per the standards set out in the County Development Plan, generate a demand for 3 no parking spaces (or 1.5 spaces / apartment). Having regard to the

existing surplus of 6no. car parking spaces within the immediate vicinity of the site, I am satisfied that there is sufficient parking available to accommodate the proposed development.

- 7.4.3. I note the appellant is concerned that the increased demand for parking in the area would further inconvenience existing residents as they may no longer be able to park close to their home however, I consider this to be a management issue and not a material planning consideration.

7.5. Devaluation of Property

- 7.5.1. I note the concerns raised in the grounds of appeal in respect of the devaluation of the property in the vicinity however having to the assessment and conclusions set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of properties in the vicinity.

7.6. Appropriate Assessment

- 7.6.1. The subject site is located within an established residential area. There are no designated sites located within or in the immediate vicinity of the site. The closest site is approximately 1.6km to the northeast, being the Pollardstown Fen SAC, Site Code 000396. 7.3.2.
- 7.6.2. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, the separation distance between same and any Natura 2000 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 permission should be granted for the proposed development subject to conditions

9.0 Reasons and Considerations

Having regard to the nature, scale and design of the proposed infill residential development, the location of the proposed development within a residential area and the established character and patten of development in the area and, the availability of car parking it is considered that, subject to compliance with the conditions set out below, the proposed development would not detract from the character of the area, would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience and would accord with the objectives and development standards set out in the Kildare County Development Plan 2017-2023. 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 on the 21st October 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.</p> <p>Reason: In the interest of clarity</p>
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2.	<p>Details of the materials, colours and textures of all the external finishes to the proposed structure shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity</p>
3.	<p>Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works. Surface water from the site shall not be permitted to drain onto the adjoining public road.</p> <p>Reason: To ensure adequate servicing of the development, and to prevent pollution.</p>
5.	<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, protection of the public roads and public footpaths, and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
6.	<p>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</p>

<p>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.</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>

Lucy Roche
Planning Inspector

2nd March 2022