



An
Bord
Pleanála

Inspector's Report

ABP-313008-22

Development	87 houses and a creche. Associated site development works.
Location	Whitelands East,, Kildare Town,, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	211033
Applicant(s)	Thoval Properties Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party v Conditions
Appellant(s)	Tom Simpson
Observer(s)	None
Date of Site Inspection	29 th of November 2022
Inspector	Karen Hamilton

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1.0 Site Location and Description

- 1.1. The site (c.3.6ha) is a greenfield site, located to the north of Kildare Town, Co. Kildare. The site is located to the east of the R415 and radiates from the road, west to the rear of an existing residential development which has direct access onto the R415.
- 1.2. There is no existing vehicular access into the site and the boundary treatment along the R415 includes mature trees and hedging. The train station is located c. 200m to the south and the main train line runs south of the subject site.

2.0 Proposed Development

- 2.1. The proposed development would comprise of 87 homes and a creche as detailed below:
 - 47 number 3-bed semi-detached 2-storey houses;
 - 12 number 2-bed mid-terrace 2-storey houses;
 - 21 number 3-bed end of terrace 2-storey houses;
 - 1 number 4-bed semi-detached 2-storey house;
 - 3 number end of terrace 4-bed 2-storey houses;
 - 3 number 4-bed detached 2-storey homes;
 - 228m² single storey creche; and
 - all associated site development work.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 47 no. conditions of which the following are of note:

C6: Boundary treatment conditions. No paladin fencing to be used on the boundary of the crèche, site boundaries block wall and native hedgerow planting on the roadside.

C7: Inclusion of a 2.4m high block wall between the property and Iarnród Éireann site.

C9: Road No 1 shall be constructed fully as far as the “potential future link with adjoining lands” and a solid and secure boundary provided with appropriate levels of security until development will occur.

C14: Applicant shall use “best practicable means” to prevent/ minimise noise and dust emissions during the construction phase.

C18: Provision of a 2m wide footpath and 1m wide grass verge along the entire front with Rathbride Road (R415) and construction and delivery of the footpath shown.

C19: Provision of a signalised pedestrian junction on the Rathbride Road.

C28: Transfer of lands to KCC to ensure the delivery of the required link between the site to the southwest (17-1271) and the current permission (21-1033).

C34: IW agreement.

C35: Delivery of the water and wastewater network through third party lands, in compliance with the Irish Water (IW) requirements. The required network upgrades should make allowance to a connection of phase 2 of the development and the approved houses on the adjacent third-party lands to the west (where deemed necessary by Irish Water).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission

Further Information:

1. Revised drawings to indicate compliance with the minimum widths, storage requirements and general layout of the 2 bed units and Units A3, A1 & B1.
2. Revised proposals for the front door and removal of the glazed canopy.
3. Submission of details for the elevation, floorplans and sections for B7 plot No. 43.

4. Submission of a landscaping plan and planting schedule for natural play areas and proposed boundaries.
5. Submission of plans and elevations of the proposed entrance from Rathbride Road (R145)
6. Submission of the proposed waste storage facilities for the mid terrace dwellings and bicycle storage.
7. Revised drainage strategy including impermeable surfaces and rainwater harvesting.
8. Increased SuDS measures to address the need for nature-based solutions, deeper infiltration systems, drain-strips and attenuation areas. SuDS measures which store surface water at ground surface level will be subject to a risk assessment.
9. Submission of viable infiltration rates of subsoils for the attenuation soakaway at a depth 2.1m below ground level.
10. Site investigation works for the infiltration tests.
11. Additional ground water monitoring and potential for deeper SuDS measures.
12. Compliance with GDSDS.
13. Revised attenuation storage and drainage pipe network design calculations
14. Revised Site-specific Flood Risk assessment to take into consideration drainage and surface water overland flow elements.
15. Groundwater flood risk to be informed by the groundwater monitoring programme.
16. Additional assessment of the pluvial flood risk of the proposed surface water drainage design exceedance events.
17. Inclusion of climate change events.
18. Increase in width of carriageways.
19. Submission of a sept path drawing.
20. Inclusion of built-in double socket for houses.

21. Liaise with the adjoining developer and submit a detailed design for the permeability link at the southern end of the site into the adjoining estate.
22. Footpath improvement works along the Rathbride Road
23. Submission of a ducting and wiring drawing.

Clarification of Further Information

1. Submission of a revised Acoustic Design Statement with noise results and additional assessments.

3.2.2. Other Technical Reports

Transport Department: No objection subject to conditions.

Housing Department: Request for additional information on parking provision.

Municipal District Engineer (Water): No objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water (IW): No objection subject to conditions.

Iarnród Éireann: No objection subject to conditions.

Health Service Executive (HSE): No objection subject to conditions.

3.4. **Third Party Observations**

One third party submission was received from the appellant. The issues raised are like those raised in the grounds of appeal and are summarised below in Section 6.0.

4.0 **Planning History**

4.1.1. Subject site

Reg Ref 19/946

Permission granted on the site (and additional lands to the east) 5.49 ha for the modification of permission Reg Ref 17/1018 for an increase of housing from 74 no to 97 (additional 23 no dwellings) with additional associated alterations to accommodate the changes.

Reg Ref 17/1018

Permission granted on the site (and additional lands to the east) 5.49 ha for 74 no. dwellings subject to 42 no. conditions of which the following are relevant to this appeal:

C39: Prior to occupation of development, the applicant shall arrange transfer of land required for the completion of future permeability links to Kildare County Council. This includes the required link from the development to the adjoining site as shown at the southwest corner of the development (area on the map hatched in blue). Specifically, for the above, the land and setback necessary to connect: carriageway, footpaths, cycle paths and verges shall be transferred over to Kildare County Council.

Reason: To limit the number of vehicular junctions on Rathbride Road and allow permeability for Vulnerable Road Users, during future phases of adjoining residential development.

4.1.2. Site to the east, currently fronting onto the R415

ABP 302534-18 (Reg Ref 171271)

Permission granted for 14 dwellings and subject to 19 conditions of which the following are relevant to this appeal:

C2: No development should take place until written confirmation from the PA that there is spare capacity in the existing 225mm existing sewer at Curragh Finn estate to accommodate foul sewerage.

5.0 Policy Context

5.1. Kildare Town Local Area Plan 2012-2018

Zoning

The site is located on lands zoned C1 and C1*, Phase 1 residential, where it is an objective “To provide and improve new residential areas and for associated local shopping and other services incidental to new residential development.”

*Lower density residential development at a maximum of 10 units per hectare.

Density

Table 11: Indicative Residential Densities

- Outer suburban/greenfield 30-50 uph

5.2. **Natural Heritage Designations**

The site is located:

- c. 450m to the west of the Curragh pNHA (code 000392),
- c. 3.5km to the southwest of Pollardstown Fen (site code 00396),
- c. 11km to the northeast of the River Barrow and River Nore SAC (site code 002162).

5.3. **EIA Screening**

The proposed development includes 87 no dwellings and a creche. The proposal does not exceed the thresholds for mandatory EIA (i.e., 500 dwellings or an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere) as per Item 10(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). Having regard to the absence of any connectivity to any 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.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal are submitted by the owner of the site to the south, between the appeal site and the railway line. The appeal relates to the proposal to access into an adjoining site and requests an amendment to conditions No 9 and No 35. The issues are summarised below:

6.1.1. Vehicular Access and Provision of Bicycle and Pedestrian Links

- Condition No 9 requires Road No. 1 to be brought to the eastern boundary of the appeal line. This condition future proofs the applicant's requirement to deliver permeability into the appellant site.
- The appellant has two separate land parcels to the south.
- One of the land parcels requires access via Road No 1 and Road No 4.
- The PA report is not clear that there is a requirement for three road connections through the site (road 2 does not serve the applicants lands).
- The design and configuration of Road No 4 is such that it terminates in a hammer head and does not connect to the appellants lands.
- It is required that there is a 25m buffer zoned along the railway embankment.
- KCC was requested to impose a condition similar to that on ABP 302534-21 (Reg Ref 17/1271) Condition No. 3 (d) which is necessary to safeguard the delivery of the roads.
- A future connection can not be made via Road No.4.

6.1.2. Water Services and Utilities

- Section 34 (4) (m) of the Act requires the practical delivery of services in excess of the immediate needs of the proposed development.
- Section 15 of the Act requires the PA to take such steps necessary to deliver the objectives and polices of the development plan.
- KCC is obliged to deliver the housing targets through the delivery of Phase 1 residential lands.
- KCC could pay additional costs for the delivery of water services and recoup that through a special contribution.
- Condition No 35 does not future proof development of adjoining lands.
- It is requested that Condition No 35 is amended (copy of recommended wording detailed in the assessment below).

6.1.3. Additional documentation

- Copy of appellant's submission.
- Copy of Irish Rail submission referring to the 25m buffer.

6.2. Applicant Response

- 6.2.1. A response was received from an agent, on behalf of the applicant, to state that there is no objection to the principle of facilitating access to the lands south of the site and subsequent amendments to condition No.9 (Roads 1 & 2).
- 6.2.2. The applicant has no objection to an amendment to Condition No 35 which requires all services and utilities to be brought up to the boundaries of the appeal site. There is no objection to the foul and water mains and ducting for cabled services at the boundaries at roads 1 & 2.
- 6.2.3. There is concern in relation to the proposed amendments for the surface water connection. There is no surface water network available in the vicinity of the site and the applicant is proposing to use SuDS to comply with the Policy G1 31 and G1 32 of the development plan. The design of the surface water will only treat that on the site and has no capacity to cater for other third-party lands.
- 6.2.4. An engineer's letter to confirm the surface water design and capacity for discharge accompanied the submission.

6.3. Planning Authority Response

A response was received from Kildare County Council to state that there are no further comments or observations and request the decision to grant is upheld.

6.4. Observations

None received.

7.0 Assessment

7.1. Section 139 of the Planning and Development Act (as amended) 2001, allows, where an appeal is brought against a decision of the planning authority to grant permission and only relates to a condition then, if the Board is satisfied having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted, in its absolute discretion, give the relevant authority such direction it considers appropriate relating to the attachment, amendment or removal by that authority either of the condition or conditions to which the appeal relates or of other conditions.

7.2. The grounds of appeal have raised issues which relate only to Conditions No. 9 and No. 35. The applicant's response deals only with those issues relating to the amendments of both Condition No.9 and No.35. I am satisfied no further issues have been addressed which require assessment outside those relating to both conditions. Therefore, I am satisfied this appeal may be dealt with under Section 139 of the Act.

7.3. I consider the issues can be addressed under the following headings:

- Condition No. 9
- Condition No. 35
- Appropriate Assessment

7.4. Condition No. 9

7.4.1. The grounds of appeal have been submitted from the landowner of the site to the south of the subject site. The appellant's site is currently landlocked between the subject site and the main railway line along the south of the site and the lands are zoned for residential development. The proposed development includes a new access into the site from the R415 and an access through the existing estate to the west of the site. The proposal includes four internal roads, of which road no. 1 and road No 4 will provide access into the appellant's lands.

7.4.2. Road No 1 extends up to an including the red line boundary whilst road no 4 includes a turning head. The grant of permission includes condition no.9 which details the

finish for road no. 1. The appellant notes this condition (detailed below) although has raised concern that the design and layout of road no. 4, which does not extend right up to the red line boundary, will preclude a future access into the appellant's site.

7.4.3. Condition No. 9 of the permission states:

Road No. 1 shall be constructed fully as far as the "potential future link with adjoining lands" at the southeast of the site. A solid and secure boundary shall be provided in this location to provide appropriate levels of security until such time as any development may occur on the adjoining property. The boundary shall be agreed with the Planning Authority prior to commencement of development.

Reason: In the interest of proper planning and sustainable development.

7.4.4. To ensure sufficient permeability between the subject site and the appellant's site, the grounds of appeal consider the wording of Condition No. 9 should be amended to ensure full and unrestricted access through both Road No. 1 and Road No.4. The appellant's recommended wording for Condition No.9 is detailed below:

Prior to the commencement of any works on the site, the following details shall be submitted to and agreed with the planning authority;

- a) A revised Site Layout Plan that clearly shows proposed vehicular, pedestrian and cycle links associated with Roads No. 1 and 4 continued to the eastern and southern site boundaries, respectively (as outlined in red).
- b) A "Taking in Charge" drawing/plan shall be submitted which correlates with the revised site layout plan (under point (a), above) and identifies Road Nos. 1 and 4 to be taken in charge by the planning authority for its full extent up to and terminating right onto the eastern and southern site boundaries, respectively.

7.4.5. The appellant considers the wording of this condition will allow for the road to be taken in charge up to the third-party lands and allow a common boundary. The applicant's response to this issue notes no objection to the proposed amendments to Condition No.9. The PA have not commented on the proposed alterations.

7.4.6. The Design Manual for Urban Street and Roads (DMURS) advocates the creation and manage of permeable street networks to ensure appropriate movement and

ensure local accessibility. Guidance on the design of permeable networks is provided throughout DMURS and Figure 3.9 includes illustrations on the creation of permeable networks. I note the design of Road No. 1 allows for unrestricted future access between the subject site and the adjoining residential lands, in line with the requirements of DMURS. The design of Road No. 4 is such that the turning head stops before the red line boundary and there appears to be a grass verge between the road and the adjoining residential lands (appellants site). I consider this design would prevent future vehicular access between the sites due to the include of the grass verge (potential random strip).

- 7.4.7. Havin regard to the design of Road No. 4 I consider it appropriate that Condition No. 9 should be amended to ensure an unrestricted future link into the appellant's site. In this regard I consider the appellant's recommended wording reasonable to ensure this permeability and I recommend Condition No. 9 is amended.

7.5. **Condition No. 35**

- 7.5.1. As stated above, the appellant is concerned the residential zoned lands to the east of the subject site can be developed in the future. They consider the PA should ensure the delivery of these lands as supported in the policies and objectives of the development plan. The grounds of appeal are concerned that services such as water and utilities are provided for their lands. In relation to the role out and delivery of water, condition No. 35 was included, as detailed below:

The proposed development shall not commence until the required network (water and wastewater) upgrades (IW CDS 21002798 Confirmation of Feasibility 18.06.02) have been sanctioned by Irish Water and the wayleave for the wastewater sewer outfall and watermain through the adjacent third-party property to the west has been legally executed to the satisfaction of Irish Water and Kildare County Council Water Services Department. No units shall be occupied until the required network (water and wastewater) upgrades are completed and commissioned to the satisfaction of Irish Water and Kildare County Council Water Services Department. NB The required network upgrades should make allowance for the connection of Phase 2 of the

development and the approved houses on the adjacent Third-Party property to the west were deemed necessary by Irish Water.

7.5.2. The appellant notes the provisions of Condition No. 35 which requires connectivity to third party lands to the west, but not to the east (appellant's lands). The grounds of appeal request that the condition is amended to extend utilities into their site as amended below (strike through for removed text and bold for additional text):

(c) ~~The proposed development shall not commence until the required network (water and wastewater) upgrades (IW CDS 21002798 Confirmation of Feasibility 18.06.02) have been sanctioned by Irish Water and the wayleave for the wastewater sewer outfall and watermain through the adjacent third party property to the west has been legally executed to the satisfaction of Irish Water and Kildare County Council Water Services Department. No units shall be occupied until the required network (water and wastewater) upgrades are completed and commissioned to the satisfaction of Irish Water and Kildare County Council Water Services Department. NB The required network upgrades should make allowance for the connection of Phase 2 of the development and the approved houses on the adjacent Third-Party property to the west~~ **(under KCC Planning Ref. 17/1271 and/or any subsequent planning permission relating thereto) and the adjoining Third party zoned residential plans to the south thereof and to the south of the development hereby approved,** were deemed necessary by Irish Water.

(d) A "Taking in charge" drawing/plan shall be submitted to and agreed with the planning authority that identifies all water, wastewater, surface drainage and utilities infrastructure brought up to the site boundaries with adjoining lands to the south of the development hereby approved (in the general location of the termination points of Roads 1 and 4 at the eastern and southern site boundaries, respectively and as required by Condition No. 9, attached) to be taken in charge by the Planning Authority.

7.5.3. The applicant's response to the grounds of appeal notes the requested amendments. Whilst there is no objection to the provision of foul drainage, water mains and ducting to those boundaries of the site at roads 1 and 4, there are

concerns in relation to the delivery of surface water infrastructure to accommodate future development on the appellant's lands. The applicant notes the requirements of the development plan in particular Policy G1 31 and G1 32 which require a SuDS based approach to the treatment of surface water. In this regard, they consider the design of their surface water system can only accommodate that surface water within the subject site and not additional surface water from site in the vicinity. An engineer's letter was accompanied with the applicant's response to the grounds of appeal confirms the design of the surface water treatment and use of SuDS based systems.

- 7.5.4. I note, on foot of a further information request, the applicant redesigned the surface water treatment on the site. The revisions included the integration of a green-blue roof at the creche, tree pits, swales, soakaways in association with lined attenuation. The applicant has undertaken detailed investigations to ensure the design can accommodate the surface water. I note the permission includes conditions relating to the treatment of surface water (e.g., Condition No 11, No 37- 42) which I consider are reasonable to treat the surface water on site and not the appellant site.
- 7.5.5. The current national guidance on the treatment of surface water ¹requires a nature-based approach to the treatment of surface water rather than hard infrastructure. Any development proposal is assessed on its own merits in line with the best practice guidance. I do not consider it reasonable to assume the appellant could connect into the adjoining third party lands. Therefore, I do not consider the alterations to condition no. 35 and specific reference to surface water are reasonable.
- 7.5.6. This aside, I note the appellants reference to foul water, water and ducting. In this regard the delivery of these connections up to and including the red line boundary are considered reasonable and in keeping with the proper planning, sustainable development and roll out of residential lands. I note the appellant's reference to a special contribution and the need for the PA to deliver infrastructure to service residential zoned lands. As stated above, the proposed development is subject to a range of conditions relating to water of which one of these (condition No 35) relates

¹ Nature-based Solutions to the Management of Rainwater and Surface Water Runoff in Urban Areas, Water Sensitive Design, Best Practice Interim Guidance Document, Government of Ireland

to the appropriate sharing of the public network, which I consider reasonable. I find no justifiable reason why the applicant of the subject site would be subject to a special contribution and subject to compliance with those conditions, they would be reasonably accommodating the delivery of services on adjacent lands.

7.5.7. Condition No. 35 relates to Irish Water Infrastructure. The appellant's amendments for this condition relate to other infrastructures. Whilst there is no objection to wording like that suggested in the grounds of appeal, I consider the reference to delivery of services, other than water, more relevant within Condition No. 9 and integrated the design of road no. 1 and no. 4. Those amendments relating specifically to Irish Water infrastructure could remain within the context of condition No. 35.

7.5.8. Therefore, having regard to the proper planning and the planned delivery of residential zoned lands, I consider the amendment of Condition No. 35 should include additional wording to ensure the delivery of waste and water infrastructure into the appellants lands and Condition No. 9 should be expanded to include appropriate reference for utilities infrastructure. As sated above, I do not consider the conditions should be amended to reflect the delivery of surface water infrastructure to adjoining sites.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and scale of the proposed development and its proximity to the nearest European 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 Condition No. 9 and Condition No.35 are both amended having regard to those reasons and considerations below.

9.0 Reasons and Considerations

9.1. Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of Section 139 of the Planning and Development Act, 2000, as amended:

To **AMEND** Condition No.9 as follows for the reasons and conditions set out hereunder:

9. Prior to the commencement of any works on the site, the following details shall be submitted to and agreed with the planning authority;

- a) A revised site layout plan that clearly shows proposed vehicular, pedestrian and cycle links associated with Roads No. 1 and 4 continued to the eastern and southern site boundaries, respectively (as outlined in red).
- b) A "Taking in Charge" drawing/plan shall be submitted which correlates with the revised site layout plan (under point (a), above) and identifies Road Nos. 1 and 4 to be taken in charge by the planning authority for its full extent up to and terminating right onto the eastern and southern site boundaries, respectively.
- c) In conjunction with a and b above, a revised site layout plan that clearly shows the utilities infrastructure brought up to the site boundaries with adjoining lands to the south of the development, in conjunction with Roads No 1 and 4.

Reason: In the interest of proper planning and sustainable development and ensure sufficient permeability between the site and surrounding lands.

Reasons and Considerations (1):

It is considered that the alteration to Condition No.9 is necessary to ensure future unrestricted permeability between the subject site and the residential zoned lands adjoining to the site.

To **AMEND** Condition No.35 as follows for the reasons and conditions set out hereunder:

The proposed development shall not commence until the required network (water and wastewater) upgrades (IW CDS 21002798 Confirmation of Feasibility 18.06.02) have been sanctioned by Irish Water and the wayleave for the wastewater sewer outfall and watermain through the adjacent third party property to the west has been legally executed to the satisfaction of Irish Water and Kildare County Council Water Services Department. No units shall be occupied until the required network (water and wastewater) upgrades are completed and commissioned to the satisfaction of Irish Water and Kildare County Council Water Services Department. NB The required network upgrades should make allowance for the connection of Phase 2 of the development and the approved houses on the adjacent Third-Party property to the west (under KCC Planning Ref. 17/1271 and/or any subsequent planning permission relating thereto) and the adjoining Third party zoned residential plans to the south thereof and to the south of the development hereby approved, were deemed necessary by Irish Water.

Reason: In the interest of proper planning and sustainable development and to ensure the proper servicing of the development and surrounding area.

Reasons and Considerations (2):

It is considered that the alteration to Condition No.35 is necessary to ensure future unrestricted sharing of essential infrastructure between the subject site and the residential zoned lands adjoining to the site.

Karen Hamilton

Senior Planning Inspector

09th of December 2022