



An
Bord
Pleanála

Inspector's Report ABP-313670-22

Development	Construction of 20 dwellings
Location	Gully, Bandon, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	215565
Applicant(s)	Michael & Lucy O'Mahony
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party v. Conditions
Appellant(s)	Michael & Lucy O'Mahony
Date of Site Inspection	5 th October 2022
Inspector	Liam Bowe

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1.0 Site Location and Description

1.1. The 0.72 hectare site is located at the western side of the town of Bandon in County Cork. It is accessible from the north via Oaklawn and Castle Oaks housing developments from Upper O'Mahoney Avenue. A recently constructed estate road bounds the site to the north, and this serves residential development in the area. The appeal site is divided from the Castle Oaks housing development by a 2m high block wall along its northern boundary. There is a row of one-off houses along the eastern boundary of the site. The western and southern site boundaries, which are shared with Oaklands House, a protected structure, are comprised of mature trees. There is an agricultural access to the appeal site at the south-eastern corner off Doherty's Road.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of 20 houses and all ancillary works. Access to the development is proposed to be via Castle Oaks housing development. The scheme would be developed in one phase. There would be 2 detached and 18 semi-detached houses in the scheme. This was amended at RFI stage and, consequently, there would be 3 detached and 16 semi-detached houses in the scheme. The principal open space serving the development would be located centrally and would include a play area and a kickabout area. The development would be served by a mains water supply and public sewer.
- 2.2. Details submitted with the application included Photomontages, an Aboricultural Impact Assessment and a Landscape Masterplan.

3.0 Planning Authority Decision

3.1. Request for Further Information

- 3.1.1. Prior to notification of decision, the Planning Authority issued a further information request on 28th July 2021 requiring a revised layout and Tree Protection Plan, a revised landscaping plan, revised Part V proposals, evidence of right of way to access the site, a Confirmation of Feasibility from Irish Water, site specific designs for a surface water attenuation system, details of naming and numbering for the

estate, and a construction management plan. The First Party submitted a site layout plan with minor amendments and a justification for this, revised Part V proposals, evidence of right of way to access the site, a CoF from Irish Water, site specific designs for a surface water attenuation system, details of naming and numbering for the estate, and a Preliminary Construction Management Plan.

3.2. **Decision**

3.2.1. By order dated 3rd May 2022 Cork County Council issued a notification of decision to Grant Permission for the proposed development subject to 41 no. conditions. Of note are the following conditions:

Condition No.2: Before development commences on site, detailed revised drawings to be submitted for the written agreement of the Planning Authority incorporating the following amendments:

- a) Omission of Units 9 - 16 and Unit 19, the maintenance access lane and associated car parking spaces in the western portion of the site and revised proposal submitted detailing this area laid out as additional landscaped open space with the provision of additional tree planting.
- b) The reorientation of Units 17 and 18 by 90 degrees to face north and ensure that there is a positive relationship between these units and Unit 20.

Reason: In the interests of clarity.

Condition No.3: This permission provides for 10 no. residential units only, consisting of 8 no. 3 bed semi-detached dwellings and 2 no. 4 bed detached dwellings.

Reason: In the interests of clarity.

3.3. **Planning Authority Reports**

3.3.1. **Planning Reports**

There are two Planning Reports on file dated 28th July 2021 and 29th April 2022, respectively. The Planning Officer in the initial report stated the principle and density of housing was acceptable but raised concerns about the impact on the mature landscape associated with Oaklands House, the potential impact on the residential amenities of houses along Doherty's Road, and issues with roads/connections and

water services. The report recommended further information be requested regarding a revised layout and Tree Protection Plan, a revised landscaping plan, revised Part V proposals, evidence of right of way to access the site, a CoF from Irish Water, site specific designs for a surface water attenuation system, details of naming and numbering for the estate, and a construction management plan.

Appropriate Assessment Screening was carried out and concluded that there is no likely potential for significant effects to any Natura 2000 site.

A second Planner's Report (dated 29th April 2022) refers to the further information submitted and considered that, having regard to the additional information, permission should be granted subject to 40 no. conditions. Further to this, the Senior Planner recommended that 1 no. additional condition should be attached to a grant of permission.

3.3.2. **Other Technical Reports**

Conservation Officer: The initial report dated 27th July 2021 outlined concerns in relation to the cumulative removal of trees associated with the Oaklands House demesne. The second report dated 28th April 2022 outlined concerns about the lack of changes to the layout and recommended that permission be granted with conditions.

Area Engineer: The initial report dated 27th July 2021 highlighted concerns in relation to the right of way to access the site, CoF from Irish Water, surface water attenuation, roads and boundary details. The second report dated 27th April 2022 recommended that permission be granted. Conditions recommended.

Ecologist: The initial report dated 28th July 2021 outlined concerns in relation to trees associated with the Oaklands House demesne overhanging the proposed housing. The second report dated 25th April 2022 recommended that permission be granted. Conditions recommended.

Estates Engineer: The initial report dated 7th July 2021 outlined concerns in relation to a right of way, access for construction traffic, roads layout for pedestrians, and surface water disposal. The second report dated 27th April 2022 recommended that permission be granted. Conditions recommended.

Public Lighting Engineer: No objection. Conditions recommended.

Housing Officer: The initial report dated 7th July 2021 requests that the floor area of the proposed social housing units be reduced by 15-20%. The second report dated 27th April 2022 recommended that permission be granted.

Environment Officer: No objection. Conditions recommended.

3.4. **Prescribed Bodies**

Irish Water: Request that applicant liaises with IW through a pre-connection enquiry and that the outcome of this be submitted to the Planning Authority.

Inland Fisheries Ireland: Request that IW signifies that there is sufficient hydraulic and organic capacity in the Bandon town WWTP to treat the effluent from the proposed development.

3.5. **Third Party Observations**

Three submissions were received from Christina Neville, James Neville, and Niamh & Tadhg Sammon. The issues raised in these submissions were in relation to boundary treatment with Oaklands House, and overlooking of a house along Doherty's Road, the height of this shared boundary and the use of a right of way.

4.0 **Planning History**

4.1. **Adjacent sites:**

P.A. Ref. No. 04/5055: Permission granted for 78 houses on the site to the north.

P.A. Ref. No. 16/5884: Permission granted for 8 houses on the site immediately to the north.

ABP-313202-22 (P.A. Ref. No. 21/5285): Concurrent appeal by Anthony Neville for permission for a two-storey house on the site to the west.

ABP-313196-22 (P.A. Ref. No. 21/5290): Concurrent on appeal by James Neville for permission for a two-storey house on the site immediately to the west.

5.0 Policy Context

5.1. Urban Development and Building Heights Guidelines for Planning Authority (2018)

5.1.1. SPPR 4

It is a specific planning policy requirement that in planning the future development of greenfield or edge of city/town locations for housing purposes, planning authorities must secure the minimum densities for such locations set out in the Sustainable Residential Development in Urban Areas (Cities, Towns and Villages – Guidelines for Planning Authorities (2009).

5.2. Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) – Guidelines for Planning Authorities (2009) and Best Practice Urban Design Manual

5.2.1. Edge of centre sites

“The emphasis will be on achieving successful transition from central areas to areas at the edge of the smaller town or village concerned. Development of such sites tend to be predominantly residential in character and given the transitional nature of such sites, densities to a range of 20-35 dwellings per hectare will be appropriate including a wide variety of housing types from detached dwellings to terraced and apartment style accommodation.”

5.3. Cork County Development Plan 2022-2028

I draw the Board’s attention to the adoption of the County Development Plan on 25th April 2022, which came into effect as the statutory plan for the county on 6th June 2022.

5.3.1. Objective CS 2-4: Greater Cork Ring Strategic Planning Area

- b) Establish an appropriate balance in the spatial distribution of future population growth, in line with this Core Strategy, so that **Bandon**, Fermoy, Kinsale, Macroom and Youghal can accelerate their rate of growth and achieve a critical mass of population to enable them to maximise their potential to attract new investment in employment, services and public transport.

5.3.2. The plan designates Bandon as a Main Town in the settlement typology. The appeal site has a land use zoning of 'Residential' and the specific development objective (**BD-R-04**) for the site states:

'Medium A Residential Development. Proposals to include a comprehensive landscaping plan which includes the retention of existing trees on site and to make adequate provision for their protection during construction.'

5.3.3. **Medium Density 'A'**

An increased minimum threshold is proposed for the Medium A Density category to 30 units/ha as per the Guidelines. The category allows for the provision of apartments within the unit typology mix but it is not a requirement. This category is generally applicable to suburban and greenfield sites in larger towns >5,000 population and those planned to grow >5,000 population over the lifetime of the Plan.

5.4. **Natural Heritage Designations**

The appeal site is not located within any designated European site. The closest Natura 2000 sites are Courtmacsherry SAC (Site Code: 001230) and Courtmacsherry SPA (Site Code: 004219) which are located approximately 8.8km to the south of the appeal site.

5.5. **EIA Screening**

The project falls under Class 15, Schedule 7 of the Planning and Development Regulations 2001, as amended. The project is below the threshold for triggering the need to submit an EIAR and having regard to the nature of the development comprising a significantly sub-threshold residential development on appropriately zoned lands where public piped services are available 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

6.1.1. The grounds of appeal are submitted by Cunnane Stratton Reynolds, Copley Hall, Cotter Street, Cork on behalf of Michael & Lucy O'Mahony. The main points made can be summarised as follows:

- Contend that the part of the proposal omitted from the development by Cork County Council will not impact upon the trees within Oaklands Demesne.
- Contend that the trees will not impact upon the proposed development and present slight amendments by retaining existing ground and surface conditions along the proposed maintenance access lane.
- Contend that the proposed development maximises the development potential of the site.
- Contend that the proposed scheme complies with national planning guidance and policy and that the Council's reduction of the proposed development to 10 no. units is a wasteful use of a serviced site.

6.2. Planning Authority Response

The Planning Authority state that all the relevant issues have been covered in the technical reports and have no further comment to make.

7.0 Assessment

7.1. Principle of the development

- 7.1.1. Bandon is designated as a 'Main Town' in the Cork County Development Plan 2022-2028. The appeal site lies within the town's development boundary and has a land use zoning of 'Residential' and a specific development objective (BD-R-01 Medium A Density Residential Development), which seeks proposals to include a comprehensive landscaping plan which includes the retention of existing trees on site and to make adequate provision for their protection during construction.
- 7.1.2. The proposed residential layout is typically suburban with a 'horseshoe' layout of houses, centrally located open space, and standard three and four bed detached and semi-detached houses giving an appropriate housing mix at this location. Given the location of the site relative to the town centre and existing developed lands, I consider that the proposed development would form a coherent addition to the built-up area of the Bandon town area. This is a fully serviced site and utilisation of existing infrastructure will allow the proposal to successfully integrate with the established housing.
- 7.1.3. This is a first-party appeal only against condition no.'s 2 and 3 attached to the planning authority's decision to grant permission. These conditions primarily relate to the removal of Units 9 – 16 and Unit 19 and specify that the permission provides for 10 no. units only.
- 7.1.4. Having regard to the nature and scale of the proposed development and the nature of condition no.'s 2 and 3 it is considered that the determination by the Board of the application, as if it had been made to it in the first instance is not needed, and that a de novo assessment would not be warranted. Therefore, the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.

7.2. Condition No.'s 2 and 3

- 7.2.1. As stated earlier in this report, the proposed development was amended at RFI stage and, consequently, comprises 3 detached and 16 semi-detached houses. Condition No.2 requires the omission of Units 9 - 16 and Unit 19, the maintenance

access lane and associated car parking spaces in the western portion of the site, and the reorientation of Units 17 and 18. Condition No.3 clarifies that the permission is for 10 no. residential units only, consisting of 8 no. 3 bed semi-detached and 2 no. 4 bed detached houses. The Board should note that revised drawings were submitted as part of the appeal demonstrating 3 detached houses, 16 semi-detached houses, and no ground or surface treatment along the proposed maintenance access lane.

- 7.2.2. The Planning Authority's reason for attaching condition no.'s 2 and 3 to their notification of a decision to grant permission is stated as 'in the interests of clarity'. However, the reasoning is articulated more fully within Senior Planning Officer's report dated 29th April 2022, where it is stated:

"At both pre-planning stage and during the further information period, the applicants were advised of the Planning Authority's concerns regarding the proposed layout of this section of the site. The site layout remains largely unchanged apart from the introduction of an access lane which would impact significantly on the existing trees. The choice of the applicants not to take on board the advice given by the Planning Authority was a missed opportunity to provide for a more appropriate layout which would have brought significant benefits to both the overall layout and resultant residential amenities for future occupants of the development in addition to protecting the special character and ecological significance of the adjacent perimeter belt planting."

- 7.2.3. Following my site inspection, I can confirm that there are mature trees along the southern and western boundaries of the appeal site. The mature trees along the western site boundary overhang the appeal site to a significant extent. I consider that this was the context and associated reasoning behind the Planning Authority's pre-planning advice and subsequent decision to grant permission with conditions requiring the omission of housing along this boundary.

- 7.2.4. On the basis of the Planning Officer reports on file and my observations of the site, it appears that the Planning Authority attached Condition No.'s 2 and 3 to their notification to grant permission to omit the houses along the western boundary of the appeal site for two reasons:

a) To reduce the impact on setting / curtilage of Oaklands House, and

- b) To remove the possibility of impacting on the root system of the specimen trees.

Consequently, the density of the development would be reduced, and I consider that this aspect needs to be included in the overall assessment of whether Condition No.'s 2 and 3 should be retained or omitted.

- 7.2.5. I note the comments of the First Party in relation to the curtilage of the adjacent protected structure where they contend that the part of the proposal refused permission by Cork County Council will not impact upon the trees within Oaklands Demesne. Further to this, the First Party contends that the trees will not impact upon the proposed development. I draw the board's attention to the amendment to the site layout proposed by the First Party under this appeal. The First Party now proposes to include the maintenance access lane but to leave the ground and surface condition along its path as it is, unfinished.
- 7.2.6. I further note the tree survey and assessment carried out by the First Party's Arboriculturist and the Tree Protection Plan. However, the Board should note that Section 19 of the Forestry Act 2014 outlines common scenarios where trees can be felled in an urban area without the need to submit a tree felling licence application. For the purposes of the Forestry Act, Bandon is listed as an urban area (former Town Commissioners) under Schedule 6 of the Local Government Act, 2001.
- 7.2.7. As the law stands, I consider that the development of housing along the western side of the appeal site would make the removal, or part removal, of trees more likely. Consequently, this would be likely to have a negative impact on the setting of the Oaklands House, a protected structure. I consider that the omission of the units under condition no.'s 2 and 3 is justified on the basis of avoiding a possible impact on Oaklands House demesne, a protected structure. As permitted, I am satisfied that no significant negative impact will accrue to the setting of this protected structure as a result of the proposed development.
- 7.2.8. Generally, the First Party argues that the proposal as permitted would constitute an unsustainable use of zoned/serviced land. In this regard, Government guidance issued under Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) – Guidelines for Planning Authorities (2009) states that densities in the range of 20-35 dwellings per hectare are appropriate at edge of centre locations

including a wide variety of housing types from detached dwellings to terraced and apartment style accommodation. Furthermore, SPPR 4 contained within Urban Development and Building Heights Guidelines for Planning Authority (2018) states that it is a specific planning policy requirement that in planning the future development of greenfield or edge of city/town locations for housing purposes, planning authorities must secure the minimum densities for such locations.

- 7.2.9. It is also noted that it is an objective of the National Planning Framework to increase residential densities in appropriate locations to avoid the trend towards predominantly low-density commuter-driven developments. Under the newly adopted County Development Plan, the appeal site has been given the objective of BD-R-04 and associated Medium A Density category to achieve 30 units/ha. As permitted, 10 houses on the appeal site with a stated area of 0.72 ha. constitutes a density of approximately 14 units/ha. Having regard to the location of the site within Bandon town and a logical extension to an existing residential estate on zoned and services lands, I consider that this density would be too low.
- 7.2.10. However, the site location and constraints are such that I consider it appropriate that the appeal site be seen in the context of the overall residential development at this location, known as Castle Oaks, where 78 houses have been developed under the original and subsequent permissions. A further 8 houses were developed under P.A. Ref. No. 16/5884. Cork County Council has permitted another 10 houses under this current application for permission that is under appeal. This would constitute the development of 96 houses on an overall area of 3.86 ha.¹ and result in a net density of 23 units/ha.
- 7.2.11. Although I consider that a higher density could be achieved on the appeal site with a good design/layout based on a thorough site analysis, I am satisfied that an appropriate density has been achieved within the overall Castle Oaks development. Furthermore, I consider that with a more innovative design solution a higher density of housing could also be achieved on the appeal site.

¹ P.68, Appendix A: Measuring Residential Density, Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) (DoEH&LG 2009). Calculated as follows: $3.14 + 0.3 + 0.72 = 4.16$ ha (minus significant landscape buffer strip of 0.3 ha)

- 7.2.12. No site analysis was carried out by an architect and no design / layout was formulated based on any site analysis. In the absence of a site-specific site analysis prepared by a suitably qualified architect and given the constraints on the site, I consider the inclusion of Condition No.'s 2 and 3 to be appropriate in this instance. I do note and agree with the comments contained in the Planning Officer's and Conservation Officer's reports that, with a more innovative design solution, a higher density of housing could be achieved on the appeal site.
- 7.2.13. Having regard to the planning history of the appeal site and associated housing in the Castle Oaks residential development, and the nature and scale of the development it is my view that the proposed development, which reinforces the existing character of the existing estate, is in accordance with the objectives of the County Development Plan and Section 28 guidance. In conclusion, having regard to the zoning objective for the site and the nature and scale of the proposed development, I consider that the scheme as permitted is in accordance with the objectives of the Cork County Development Plan and the National Planning Framework. I, therefore, consider that the proposed development is acceptable.
- 7.2.14. On the above basis, I consider that the proposed development of 10 houses at this location would not have any significant impact on either the visual or residential amenities of the area or on the setting / curtilage of the protected structure to the southwest of the appeal site. I therefore recommend to the Board that condition no.'s 2 and 3 be retained.

8.0 Recommendation

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 to:

RETAIN condition numbers 2 and 3.

9.0 Reasons and Considerations

Having regard to the location of the site on zoned, serviced land in Bandon town, the design and layout of the proposed housing scheme and the presence of mature trees along the western boundary of the appeal site, as well as the proposed development's overall compliance with Objective BD-R-01 in the Cork County Development Plan 2022-2028, it is considered that the development as proposed would not have a significant negative impact on residential or visual amenities of the area or on the setting / curtilage of the protected structure to the southwest of the appeal site and that the planning authority's Condition 2 and 3 requiring the omission of houses is, therefore, warranted.

Liam Bowe
Planning Inspector

3rd November 2022