



An
Bord
Pleanála

Inspector's Report ABP 315747-23

Development	Change of design of 12no dwellings.
Location	Togher Crescent, Urlingford, County Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	22/741.
Applicant(s)	Althorp Property Holdings Ltd.
Type of Application	Permission.
Planning Authority Decision	To grant permission subject to conditions.
Type of Appeal	Third Party v. Decision.
Appellant(s)	Togher Crescent Residents Association.
Observer(s)	None.
Date of Site Inspection	15 March 2024.
Inspector	B. Wyse.

1.0 Site Location and Description

The site is an area of undeveloped ground in the Togher Crescent residential estate in Urlingford. It has a stated area of 0.5549ha. It is fenced off along Togher Crescent and generally bound by high walls to the rear (west) and side (east). The undeveloped area extends further to the north outside the red line site boundary.

- 1.1. The houses on Togher Crescent fronting the site are 2 storey detached. The nearest houses on Togher Way (to the south) are single storey semi-detached and terraced. There is an industrial estate and healthcare facility on the adjacent lands to the west.

2.0 Proposed Development

The proposed development comprises a change of design for 12no dwellings previously approved under PA Ref 21/417.

- 2.1. Permission PA Ref 21/417 provided for:

- 6no 2 storey 3 bed semi-detached houses.
- 6no 2 storey 4 bed semi-detached houses.
- 2no single storey 2 bed semi-detached houses.

- 2.2. The current application proposes:

- 8no 2 storey 3 bed semi-detached houses.
- 2no 2 storey 2 bed semi-detached houses.
- 2no single storey 3 bed semi-detached houses.

- 2.3. All engineering solutions, landscaping, boundary finishes etc. as per PA Ref 21/417.

- 2.4. Proposed houses are intended for social and affordable housing.

3.0 Planning Authority Decision

3.1. Decision

The decision to grant permission is subject to 22no conditions.

Conditions include:

1. Links to conditions attached to PA Ref 21/417.
3. Requires an agreement under Part 5.
- 9(a). Requires provision of pedestrian crossing to footpath opposite.
12. Details of external finishes to houses to be agreed. Required to harmonise with houses on Togher Crescent.
14. Landscaping to be as per PA Ref 21/417.
15. Requires EV charging points.
21. Requires S.47 agreement to restrict first occupation to individual purchases and/or those eligible for social or affordable housing, including cost rental.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

Basis for planning authority decision.

Includes:

- Togher Crescent was taken in charge in 2015.
- No requirement for AA or EIA.

3.2.2. Other Technical Reports

Water Services confirm no difference in requirements from previous permission.

3.3. **Prescribed Bodies**

None received.

3.4. **Third Part Observations**

The planning authority received observations from 12no parties, mostly from residents of Togher Crescent. All are in objection to the proposed development. Issues raised are similar to those raised in the grounds of appeal (see Section 6.1 below). Additionally, the issue of devaluation of property is also raised.

4.0 Planning History

PA Refs 98/1352, 06/1329, 12/363 and 20/408

By reference to documentation on file and the planning authority's Planning Report these appear to be the founding permissions for the Togher Crescent estate as completed to date. The permissions date from 1999 to 2020.

PA Ref 21/417

This is the 2021 permission for 12no houses on the subject site and which are now the subject of the proposed change in design. The development proposed in this application was stated to complete the existing residential development (Togher Crescent).

5.0 Policy and Context

5.1. Development Plan

The relevant plan is the Kilkenny Development City and County Plan 2021-2027.

The site is located within the defined settlement boundary of Urlingford.

Section 6.4 indicates that the Housing Strategy provides that as a general policy a specified percentage, not being more than 10% of the land zoned in the development plan for residential use, or a mix of residential and other uses, shall be reserved for social and/or affordable housing.

5.2. Natural Heritage Designations

None relevant.

EIA Screening

Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary examination stage.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal is lodged by Togher Crescent Residents Association.

Main grounds can be summarised as follows:

- There is an over-provision of social housing in Urlingford and particularly in the vicinity of the application site. The theory of 20% of such housing within private housing estates is to counteract segregation. Providing 100% in a single development runs counter to this.
- No consultation with local residents.
- There is a need to upgrade the sewerage system prior to any further development.
- Additional loading on the local treatment plant will increase the damage to aquatic life and water quality contrary to EU Directives.
- There is insufficient details in a number of areas, including traffic safety, sewerage overload, surface water run-off and storm water flooding.
- No provision to improve roads, footpaths and public lighting.
- Increased traffic hazard on already inadequate roads. Parking is minimal.
- Estate already experiences flooding during heavy rain.
- Requirement for financial bond to ensure works completed on schedule and to proper standard.
- Construction impacts have not been considered.
- The proposal would overpopulate the area.
- The proposed development is not in keeping with the existing architectural character of the area.
- Is the proposal Sustainable?
- Houses directly across from the development will suffer loss of light and privacy.

- Inadequate green space. The green area to the front of number 17 Togher Crescent is a community space and should not be included in the application.
- The proposal offers no community benefit.

6.2. Applicant Response

None received.

6.3. Planning Authority Response

No further comments.

6.4. Observations

None.

6.5. Further Responses

Not applicable.

7.0 Assessment

- 7.1. The main issues in this appeal are those raised in the grounds of appeal. Appropriate Assessment (AA) also needs to be addressed. I am satisfied that no other substantive issues arise.

The Board will note that the application in this instance is for a change of design/house type only. The existing permission, PA Ref 21/417, for 12no houses on the site is still extant. In this context many of the issues raised in the appeal, and which relate to fundamental matters as to the appropriateness of developing the site in the first place, simply do not arise. These issues include those relating to sewerage, traffic, parking, road infrastructure, flooding, construction and open space provision. In relation to the latter it should be noted that the area in front of number 17 Togher Crescent is not included within the red line site boundary.

The main issues, therefore, are addressed under the following headings:

- Social Housing
- Architectural Character
- Residential Amenity
- Appropriate Assessment

7.2. Social Housing

- 7.2.1. Notwithstanding that the application in this instance is for a change of house design/type only this issue arises on the basis of the clear statement in the letter of application that the proposed houses are intended for social and affordable housing (see Section 2.3 above). I note also that while the issue was raised in the Observations to the planning authority the Planning Report makes no reference to it in the assessment of the proposal. The planning authority's response to the appeal also makes no reference to the matter.
- 7.2.2. Noting that the proposed development will complete the Togher Crescent development, to date consisting of 30no houses, I consider the development as a whole to be the appropriate context within which to address the issue.
- 7.2.3. As indicated at Section 5.1 above the planning authority's Housing Strategy provides that generally up to 10% of land zoned for residential use should be reserved for social and/or affordable housing. I note also that a more recent amendment to the founding legislation for this provision [Section 94(4)(c) Planning and Development Act 2000, as amended] now refers to up to 20% of such land.
- 7.2.4. Applying these measures as the only available yardsticks in assessing the issue I would comment as follows. At a 10% rate, and allowing for a rough equivalence between land area and housing units (and which seems to be contemplated in the legislation), one might expect about 4-5 houses in the completed estate of 42no houses to be allocated to social and/or affordable. At a 20% rate this would amount to about 8-10 houses. On this basis the proposal for 12 houses for social and/or affordable looks excessive.
- 7.2.5. I note that the planning authority's decision includes a condition (No. 3) requiring a Part 5 Agreement. I recommend that the Board, in granting a permission and

attaching a similar condition should also indicate that any such agreement should provide for no more than 6no houses for the purposes of social and/or affordable housing. This should allow for appropriate flexibility within the terms of the agreement and provide for a level of social and/or affordable housing within the overall development that is more commensurate with the stated development plan policy. It would also, in my view, reasonably meet the concerns of the appellants.

- 7.2.6. In relation to the appellants contention that there is an over provision of social housing in Urlingford generally no evidence of this has been presented and there is no indication to support it in the development plan (or the accompanying Appendix B – Kilkenny Housing Strategy).

7.3. **Architectural Character**

- 7.3.1. The existing houses at Togher Crescent are fairly typical in terms of form and design for contemporary detached suburban housing.
- 7.3.2. I do not accept that the introduction of semi-detached houses, also of a typical contemporary form and design, would in any substantive sense negatively interfere with the established architectural character of the area or give rise to any significant devaluation of properties in the vicinity.

7.4. **Residential Amenity**

- 7.4.1. Given the separation distances involved and the front facing relationship with the existing houses on the opposite side of the access road I do not consider that there is any basis to the contention that the proposed development would give rise to any loss of light or privacy to nearby properties.

7.5. **Appropriate Assessment (AA)**

Having regard to the nature and minor scale of the proposed development within an established built-up urban area and where infrastructural services are available it is possible to screen out the requirement for the submission of an NIS and the carrying out of an AA at an initial stage.

8.0 Recommendation

I recommend that permission be granted subject to conditions.

9.0 Reasons and Considerations

Having regard to the planning history of the site and to the policies and objectives of the Kilkenny City and County Development Plan 2021-2027 it is considered, subject to compliance with the following conditions, that the proposed development would not seriously injure the residential amenities of the area and would 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 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Except as required by conditions attached to this permission the development shall comply in full with the conditions attached to permission PA Ref 21/417.</p> <p>Reason: In the interests of clarifying the scope of this permission.</p>
3.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000,</p>

	<p>as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended.</p> <p>The agreement shall provide that no more than 6no houses in the proposed development shall be for the purposes of social and/or affordable housing. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
4.	<p>Details of the external finishes of the proposed houses shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The external finishes shall generally harmonise with the existing houses in Togher Crescent.</p> <p>Reason: In the interest of visual amenity.</p>
5.	<p>The developer shall provide a number of electric vehicle charging points within the development in accordance with a scheme to be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.</p> <p>Reason: In order to facilitate and encourage the use of electric vehicles.</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. The contribution shall be paid prior to the</p>

	<p>commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board 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 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>
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Brendan Wyse
Planning Inspector

19 March 2024