



An
Bord
Pleanála

Inspector's Report RP26.RP2151

Development	Point of detail regarding condition no. 2 of planning reference no. 20061351.
Location	Ard na Slaine, Ballyboggan, Wexford Rural, Wexford.
Planning Authority	Wexford County Council.
Planning Authority Reg. Ref.	
Applicant(s)	Oli Developments Limited
Date of Site Inspection	21 st September 2017
Inspector	Colin McBride

1.0 Background to the case

1.1 This case is a referral under section 34(5) of the Planning and Development Act 2000. The point of detail concerns a permission granted to JPK Developments under ref no. 20061351 for 50 dwellings and associated site works (phase 2 of development previously granted under ref no. 20045084). The point of detail concerns condition no. 2 requiring the developer to enter into an agreement under Part V in relation to the provision of social and affordable housing. Permission was granted to JPK Developments for an extension of the duration of permission for ref no. 20061351 on the 13th January 2013 with the permission to expire on the 04th of January 2017.

2.0 Referral

2.1 Referrer's case

2.1.1 A point of detail has been referred by Oli Developments Limited concerning compliance with condition no. 2 of ref no. 20061351, which requires the developer to enter into an agreement under Part V in relation to the provision of social and affordable housing. The referrer provides details of the negotiations and correspondence between the applicants/developers (JPK Developments) and Wexford County Council. The details include the proposal by the applicant/developers to reserve part of the estate comprising houses/site no.s 20-27. The documents on file indicate that this arrangement was agreeable to Wexford County Council and agreement had been reached regarding compliance with the Part V requirements as set down under condition no. 2.

2.1.2 The referrer notes that JPK Developments Ltd went into liquidation and the site was sold to current referrers (Oli Developments Ltd). It is noted that the development was partially completed and the referrer is in the process of completing the development

and has sought compliance in relation to the condition regarding Part V (I would note that the referrers submission notes that it is condition no. 2 of permission ref no. 20061351 and then later mentions condition no. 15 of the Boards decision, the reference to condition no. 15 appear to be an error as there is no relevant Board decision as ref no. 20061351 was not subject to an appeal and that the case concerns condition no. 2 of ref no. 20061351).

2.1.3 It is noted that original proposal for site no.s 20-27 is no longer agreeable to the Council who argue that such does not equate to 20% of site. The referrer notes that the site 9.3 hectares in area and that when the open space and roads area is subtracted the level of buildable land is 5.91 hectares with 20% of this figure being 1.192 hectares. It is noted that the area of site no.s 20-27 is 1.192 hectares.

2.1.4 The referrer also notes that 20% of the site area (9.3 hectares) is 1.86 hectares. Sites no.s 20-27 is 1.192 hectares and 20% of the open space/roads (of 3.34 hectares) is 0.688 hectares and these two added equals 1.86 hectares and is 20% of the total site area. The referrer notes that this 1.86 hectares (20% of the site area) take in conjunction with the area of open space/roads leaves 4.1 hectares meaning the developer is left with less than half of the original site on which to build houses and recover their costs including the provision of the land and the development of roads and open space and such was not intended or envisioned under the Part V policy.

2.1.5 The Board is requested to determine that the documents submitted regarding the previous applicant's/developers negotiations regarding compliance with Part V constitutes a Part V agreement which is in compliance with the relevant condition. The Board is also requested to determine that the provision of sites no.s 20-27 containing 20% of the buildable land (1.192 hectares) meets the Council's Housing Strategy which is the provision of 20% of the housing development.

2.2 Response by Wexford County Council

2.2.1 The response notes that the portion of site proposed to be transferred to the Council by the developers is 1.187 hectares. The Council has agreed to this but consider there is an additional liability of 7000sqm. The Council note that the portion of land to be transferred includes almost 2,930sqm of open space and roads and equates to almost 25% of the 1.187 hectares to be transferred. It is noted that the developer's contention that sites no. 20-27 are the equivalent of 20% of buildable land is not the case. The Council note that the apportionment of site infrastructural cost was agreed on the following basis...

Total Area of the site	93668.98sqm (100%)
Part V Liability @ 20%	18733.8sqm (20%)
Offered on Site	11720.13sqm (12.50%)
Remaining liability	7,025sqm (7.5%).

2.3 Response by the referrer

2.3.1 The referrer notes that the area of sites 20 to 27 is 1.187 hectares as stated by the Council (not 1.192 hectares as stated in the original referral) and this converts to 2.933 acres. It is noted that the within layout of sites 20 to 27 there is a portion of land covered by open space and roadway, but it will be a matter for the local authority to decide how the overall land take of these sites will be utilised. It is noted that it is not within the developer control to determine how the land designated as open space in the remainder of the development can be utilised. It is noted that account should be taken of the fact there is extensive amount of roadway and open space in the overall development. It is noted the development is low density with extensive open space and such will be enjoyed by all residents.

2.3.2 The referrer notes that the local authority wish to leave the developer with less than half the site after part V, 1.8 hectares plus roads and open space of 3.34 hectares are deducted from total site are of 9.3 hectares leaving 4.1 hectares, which not

reasonable or equitable. The referrer notes the correspondence with the previous developer/owners of the site in which the provision of sites 20-27 was accepted as an agreement to cover part v liabilities and that the local authority was aware of the roads and open space issues and took such into account.

3.0 Planning History

- 3.1 Ref no. 20061351: Permission granted to JPK Developments Ltd for the erection of 50 no. fully serviced dwelling houses and associated site works (Phase 2 of development previously granted under planning reg. no. 20045084).

Condition no. 2:

Prior to the commencement of the development the developer shall enter into an agreement with the Planning Authority, pursuant to Part V of the Planning and Development Act, 2000 and Part 2 of the Planning and Development (Amendment) Act, 2002, relating to the provision of social and affordable housing on site. Details of the legal agreement regarding same shall be finalised with the Local Authority within 8 weeks of the date of notification of grant of planning permission.

Reason: To comply with the requirements of the Planning and Development Act, 2000 and the Planning and Development (Amendment Act, 2002).

- 3.2 Ref no. 20061351E: Permission was granted to JPK Developments for an extension of the duration of permission for ref no. 20061351 on the 13th January 2013 with the permission to expire on the 04th of January 2017.

4.0 Policy & Legislative Context

- 4.1 Development Plan

- 4.1.1 The relevant Development Plan is the Wexford Town Development Plan 2009-2015.

The site is zoned 'Residential Low'.

- 4.2 Part V, Planning and Development Act, 2000 and the Planning and Development (Amendment Act, 2002).

5.0 Assessment

- 5.1 Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Compliance part V condition

5.2 Compliance with part V condition:

- 5.2.1 Based on the information submitted, the developers are proposing to reserve sites 20 to 27 to comply with Part V liabilities under condition no. 2 of ref no. 20061351. This equates to 1.187 hectares of the total site area of 9.3 hectares. It appears that this includes 2930sqm of open space and roads. The Local Authority are of the view that the developer's proposal is not 20% of the buildable land as it includes such and that the proposal provides for 1.1720 hectares of buildable land and therefore an additional liability of 7,000sqm is required to make up 20%. The developers' proposal coincides with 8 dwellings out of 50, which equates to 16% of the number of dwellings on site.

- 5.2.2 The referrer has submitted documents that indicate that an agreement relating to the reservation of sites 20-27 for the purposes of part V was accepted by the Council from the developers JPK Developments Ltd. It is noted the development was started and the original developers went into liquidation. The referrers and current owners purchased the site and are proposing to honour this original agreement for sites 20 to 27. The Local Authority do not consider that such is sufficient to comply with the Part V liabilities for this development. The referrers wish the Board to confirm that

the documents submitted relating to previous developers and their correspondence with the Council constitutes a Part V agreement, which is in compliance with condition no. 2 of the permission granted.

5.2.3 I would first note that the developer's proposal to reserve sites 20 to 27 does not constitute 20% of buildable land as it does include some areas of open space and roads. Notwithstanding such the Local Authority's assessment of buildable land should take into account the level of public open space and roads in its calculation with a significant level of the site laid out as open space and roads. The site layout is a key consideration in what is practicable in terms of Part V. The layout provides for a number of cul-de-sacs with a number of dwellings located off each. The proposal is to provide one of these cul-de-sac areas for the purpose of part V. I would consider that given the layout of the site this is the most practicable solution. I would note that the most dwellings provided around an individual cul-de-sac is 8 dwellings as is proposed in providing site no.s 20-27. I would consider that the most practicable solution in transferring land to the Local Authority for the purposes of Part V is the provision of one entire cul-de-sac, which is proposed and in this case no other cul-de-sac provides for more than 8 dwellings as is the case for sites 20-27.

5.2.4 In addition to practicalities of the layout, the information on file indicates that the proposal to reserve sites 20-27 was previously agreeable to the Planning Authority as a method of complying with the Part V liabilities as set down under condition no. 2 of ref no. 20061351. The referrer has submitted evidence that was the case with correspondence submitted between the original applicant and developer, JPK Developments Ltd and Wexford County Council. Having regard to such and based on the practicality of the layout, I would consider that the reservation of part of the development consisting of houses/sites 20 to 27 would comply with the requirements under Condition 2.

6.0 Recommendation

6.1 I recommend an order as follows:

WHEREAS by order dated the 23rd day of November, 2006 made by Wexford County Council, under register reference number 20061351, granted subject to conditions a permission to JPK Developments Ltd for development comprising the construction of 50 no. dwellings and associated site works (which was extended under ref no. 20061351E) at Ard na Slaine, Ballboggan, Wexford:

AND WHEREAS condition 2 attached to the said permission required the following...

2. Prior to the commencement of the development the developer shall enter into an agreement with the Planning Authority, pursuant to Part V of the Planning and Development Act, 2000 and Part 2 of the Planning and Development (Amendment) Act, 2002, relating to the provision of social and affordable housing on site. Details of the legal agreement regarding same shall be finalised with the Local Authority within 8 weeks of the date of notification of grant of planning permission.

Reason: To comply with the requirements of the Planning and Development Act, 2000 and the Planning and Development (Amendment Act, 2002).

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AND WHEREAS the developer and the Planning Authority failed to agree on the above details in compliance with the terms of the said condition and the matter was referred by the developer to An Bord Pleanála on the 22nd day of June, 2017 for determination:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, hereby determines that the Board agrees that the reservation of part of the development consisting of houses/sites 20 to 27 would comply with the requirements under Condition 2.

Colin McBride
Planning Inspector

26th September 2017