



An
Bord
Pleanála

Inspector's Report ABP 306786-20

Development	Creche to serve adjacent permitted residential development, 19 no. dwellings to replace 19 no. previously permitted and associated development works.
Location	Lisnagar Demense (Townland) Rathcormac, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	19/6892
Applicant	Abden Development Ltd.
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	1 st Party v. Condition
Appellant	Abden Development Ltd.
Observer(s)	None
Date of Site Inspection	18/05/20
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

Rathcormac is a small settlement located off the M8 Dublin-Cork road in east Cork c. 7 kilometres south of Fermoy and approximately 25 kilometres north of Cork City.

The site, which has a stated area of 1.02 hectares, comprises the south-western section of a larger site on which permission has been granted for a residential development comprising of 93 residential units under ref. 18/6579. No works have commenced to date. The lands are relatively level and are in agricultural use. They are at the south-western edge of the village accessed via regional road R614 which runs to the south of the site. The roadside boundary is delineated by a stone wall along part and a hedgerow. Single storey and dormer dwellings on large plots are on the opposite side of the R614 in addition to the entrance to the Bride Rovers GAA playing grounds. Pairc an Oir/Pairc na Greine/Pairc Glas housing estate is to the east and comprises of two storey semi-detached units. The lands to the west remain in agricultural use with no boundary delineation to the site.

The site is within the 50kph speed limit of the village. There is a footpath on the opposite side of the road as far as the existing field entrance serving the site.

2.0 Proposed Development

The application was lodged with the planning authority on the 05/12/19 with further plans and details received 19/12/19.

The proposal entails:

- Creche to serve the residential development permitted under ref. 18/6579 with a gross floor area of 150 sq.m.
- 19 no. 3 and 4 bedroom dwellings of varying designs to replace 19 no. detached and semi-detached dwellings permitted under ref. 18/6579. The layout will be similar to that permitted.

The application is accompanied by a NIS.

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 26 conditions.

Condition 23: No units shall be occupied prior to the completion of the proposed calming and upgrades on the regional road. No units shall be occupied until the services serving the adjoining housing development are taken in charge and all outstanding estate snags dealt with here.

Reason: In the interest of orderly development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Area Planner notes that the principle of the development has been established under ref. 18/6579 and the layout adequately addresses condition 2 of the said permission. No objection subject to conditions. The recommendation is endorsed by the Senior Executive Planner.

3.2.2. Other Technical Reports

Area Engineer has no objection subject to application of conditions of the original permission.

Estates Section states that the development will complete an unfinished legacy estate and is to be welcomed. No objection subject to conditions.

Public lighting recommends further information.

Water Services has no objection.

Housing Officer recommends that should permission be granted a condition be attached requiring the Part V units within this section of the estate are 'pepper potted' in blocks of no greater than 2 units on a similar basis to that originally permitted under ref. 18/6579.

Ecology concludes that subject to implementation of the mitigation measures set out in the NIS he is satisfied that the development as proposed will not pose any risk of causing water pollution and will not, therefore, pose a risk of impact to the

Blackwater River SAC. He is satisfied that the proposed development will not give rise to adverse effects on the integrity of the SAC. No objection subject to conditions.

Environment has no objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water has no objection subject to conditions.

3.4. **Third Party Observations**

None

4.0 **Planning History**

18/6579 – permission granted for 96 dwellings. Condition 2(a) required the omission of unit nos. 1 and 2 so as to provide an enlarged area for a creche. No dwelling to be occupied until such a time as a valid planning application for the creche has been received by the planning authority.

PL04.220876 (06/7880) – permission granted for 97 dwellings, sports pitch, neighbourhood play area and ancillary works. This permission was extended under ref. 13/4100 to January 2018.

5.0 **Policy Context**

5.1. **Development Plan**

Cork County Development Plan 2014

Rathcormac is a key village in the Greater Cork Ring Strategic Planning Area.

Fermoy Municipal District Local Area Plan 2017

The site is within the 'Existing Built Up Area'

Objective DB-01 – within the development boundary of Rathcormac it is an objective to encourage the development of up to 120 houses in the plan period.

5.2. Natural Heritage Designations

The River Bride, which is 500 metres to the south of the site, forms part of the River Blackwater (Cork/Waterford) SAC site code 002170.

6.0 The Appeal

6.1. Grounds of Appeal

The submission by McCutcheon Halley on behalf of the 1st party against condition 23 of the planning authority's notification of decision to grant permission can be summarised as follows:

- The sole purpose of the application is for a creche facility to serve the residential development permitted under ref 18/6579 and to replace 19 no. units which were also permitted under ref. 18/6579.
- The applicant has the right to connect to the services within the Pairc Glas/Pairc An Oir/Pairc Na Greine estate to the east. This estate/development is not within the applicant's ownership. Therefore any 'outstanding snags' are not its responsibility nor within its control to resolve.
- The Council is not entitled to impose such a condition which seeks to vary or restrict the occupancy of units proposed under 19/6892 based on the completion of works which are outside the control and responsibility of the applicant.
- The taking-in charge process is a reserved function of the County Council. It is the Council which controls the timing of taking an estate in charge. A condition requiring that no units be occupied until an adjoining housing development is taken in charge is unreasonable and ultra vires.
- It is their understanding that the bond of the existing housing development to the east has been called in by the Council. Therefore, it is possible for it to address any snags or undertake any necessary remedial works that may be required. It is unreasonable for the Council to seek to impose such remedial works on another developer.

- The condition fails all of the criteria for conditions as set out in the Guidelines on Development Management, 2007.
- It is recommended that condition 23 be amended omitting the requirement that no units be occupied until the services serving the adjoining housing development are taken in charge and that any outstanding snags dealt with so as to read:-

No units shall be occupied prior to the completion of the proposed calming and upgrades on the regional road.

6.2. Planning Authority Response

None

6.3. Observations

None

7.0 Assessment

Overview

The proposed development is consequent to a condition attached to planning reference 18/6579 for the overall lands on which 93 dwellings have been permitted. Condition 2 attached to same required the omission of unit nos. 1 and 2 so as to provide an enlarged area for a creche with no dwelling to be occupied until such a time as a valid planning application for the creche has been received by the planning authority.

The current proposal, whilst providing for the creche, also entails minor alterations providing for 19 no. dwelling units in varying designs to replace 19 no. units permitted under the said permission. As such there will be no change in the density permitted with a marginal alteration in the housing mix, only.

I am satisfied, having examined the details of the application and having visited the site, that the determination of the application by the Board, as if it has been made to it in the first instance, would not be warranted. Accordingly, I consider that it is appropriate to use the provisions of Section 139 of the Planning and Development

Act 2000, as amended, and to consider the issues arising out of the disputed condition only.

7.1. **Condition 23**

Condition 23 requires that no units be occupied prior to the completion of the proposed traffic calming measures and upgrades on the regional road R614 with no units to be occupied until the services serving the adjoining housing development are taken in charge and all outstanding estate snags dealt with. The reason given for the condition is in the interest of orderly development.

Save for the internal report from Estates Section on file there is no reference or commentary which can be construed as the basis for the condition. In the said report it is stated that *'the development will complete an unfinished legacy estate and is to be welcomed'*. It is noteworthy that whilst the report details a schedule of conditions to be attached, it does not include any which resemble that which is being appealed. I also note that no commentary is provided in the Area Planner's or Senior Executive Planner's report as to the reasoning for the condition.

It is reasonable to infer that the unfinished residential development to which regard is being had in the condition is the Pairc an Oir/Pairc Glas/Pairc na Greine scheme to the east developed under planning ref. 99/6925. As can be extrapolated from the details available the lands to which the current proposal forms part did not form part of the said residential development. Prior to the permission granted under ref. 18/6579 there has been 1 no. application, for the development of the lands under PL04.220876 (06/7880) for which permission was given for 97 dwellings (the duration of this permission was extended to 2018). Thus, whilst the scheme may give due regard to the Pairc an Oir/Pairc Glas/Pairc na Greine scheme in terms of housing and open space layout with pedestrian links to ensure connectivity in accordance with prevailing policy, they are distinct entities.

I note that the permission for the overall lands under ref. 18/6579 is not subject to any condition which can be considered to be directly comparable to that being appealed in this instance. Condition 10 states that the applicant will be responsible for the upgrade works on the R614 including traffic calming with condition 21 restricting the occupation of dwellings in phase 1 until the site services, including road improvements required in condition 10, are completed to the planning

authority's satisfaction. I note that the development is to connect to services developed as part of the Pairc an Oir/Pairc Glas/Pairc na Greine housing development.

Condition 23 essentially limits the occupation of the units until the outstanding issues within the existing estate to the east are resolved. Notwithstanding, whether or not the proposal can be considered as completing an unfinished estate and whilst the applicant has the consent to connect to the services within the estate/development, the said estate it is not within the applicant's ownership. Therefore any 'outstanding snags' are not within its control to resolve. In addition, the taking-in charge process is a reserved function of the County Council with the Council controlling the timing of taking an estate in charge. I note that it has the option to draw down the bond attached by way of condition to the relevant permission to undertake any necessary remedial works that may be required available to it.

In effect, the requirements of the condition cannot actually be realised by the applicant. On this basis I would concur with the agent for the applicant that the condition fails to meet the criteria to be met when attaching conditions as set out in Chapter 7 of the Development Management Guidelines for Planning Authorities. It is neither precise, reasonable or, indeed, enforceable and is ultra vires. As noted previously a comparable condition was not attached to permission ref. 18/6579.

The requirements in terms of the road works and traffic calming along the regional road which are referenced in the subject condition are within the remit of the applicant to fulfil. In this regard I note that details of a phasing programme for the development of the overall lands was submitted by way of further information on file ref.18/6579 with the site to which this appeal refers forming part of the area to be built out in the 4th (last) phase. Therefore, condition 10 attached to the said permission which requires the necessary works to be completed prior to occupation of any dwellings in phase 1 and before works commence on phase 2 would address the concerns. However, in the absence of a condition attached to the current case requiring compliance with the conditions attached to the said permission I consider that the retention of condition 23 and the amendment comparable to that put forward by the agent for the appellant to be reasonable in the interests of clarity.

I therefore recommend that condition 23 be amended accordingly.

8.0 Recommendation

Having regard to the documentation on file the grounds of appeal, the grounds of appeal, my site inspection, and the assessment above I recommend that the planning authority be directed to **AMEND** condition 23 as follows for the following reasons and considerations Reasons and Considerations:

Condition 23:

No units shall be occupied prior to the completion of the traffic calming and upgrades on regional road R614 as permitted under planning register reference number 18/6579.

REASONS AND CONSIDERATIONS

It is considered that the applicant does not have sufficient interest to undertake works on 3rd party lands and has no remit in the taking in charge of a development. The provisions of the condition as proposed are, therefore, ultra vires.

Pauline Fitzpatrick
Senior Planning Inspector

May, 2020