



An
Bord
Pleanála

Inspector's Report ABP-300277-17

Development	Residential development comprising of 4 no. 2 storey 3 bedroom semi-detached homes. 1 no. 3 bedroom detached home and all associated site development works.
Location	Carraig Cluain, Tullamore, Co. Offaly.
Planning Authority	Offaly County Council.
Planning Authority Reg. Ref.	17/198.
Applicant(s)	Hanney Properties Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	1 st Party.
Appellant(s)	Hanney Properties Ltd..
Observer(s)	None.
Date of Site Inspection	23/03/2018.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located within the existing residential estate of Carraig Cluain, approximately 1.5km to the north west of the town of Tullamore. Carraig Cluain is located to the east of the Clara Road, the R420. To the north of Carraig Cluain is the R443, Collins Lane, and Carraig Cluain has two access points from this road also. Collins Lane connects with Ardan Way to the east and ultimately provides access to the N52 and the M6 Motorway at Kilbeggan approximately 10km to the north.
- 1.2. The area to the east of the Clara Road is primarily residential while to the west includes the Burlington Business Park and Srah Industrial Estate areas. The site is located approximately 450m to the north east of the Srah Industrial Estate which is home to a designated SEVESO site. To the north of Collins Lane there is a large residential estate of Droim Liath, one off housing and agricultural lands.
- 1.3. The subject site is located to the south west of the Carraig Cluain estate and within a small cul-de-sac area which currently provides access for 5 houses, a small terrace of three and two detached houses. The road layout has been constructed in accordance with the parent permission and the subject site is currently unused and fenced off. The turning head to the front of the subject site would appear to be used as a dumping ground at present. The site has a stated area of 0.127ha.

2.0 Proposed Development

- 2.1. Permission is sought for a residential development comprising of 4 no. 2 storey 3 bedroom semi-detached homes. 1 no. 3 bedroom detached home and all associated site development works all at Carraig Cluain, Tullamore, Co. Offaly.
- 2.2. The development proposes the construction of 5 houses on lands which were previously granted permission for the construction of a creche as part of a larger residential development. The creche was not constructed. The proposed houses comprise two pairs of 3 bedroom semi-detached houses and one 3 bedroom detached house all with a stated floor area of 123m².

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the proposed development for the following stated reason:

The development of housing on lands zoned as open space is not normally permitted in the zoning objectives of the development plan. The proposed development of housing units in an area zoned as open space in the Tullamore and Environs Development Plan 2010-2016 (as extended) would contravene materially objective TTEO 15-02 which states that it is an Objective “to ensure that development progresses in accordance with the landuse objectives set out within this chapter.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The initial planning report notes that the site is zoned Open Space in the Tullamore Town and Environs Development Plan 2010-2016. The report acknowledges that the site is not used as open space and submits that that the use of the site for housing is deemed appropriate. A material contravention is advised. The report also includes appropriate assessment. Further information is requested in relation to the provision of a footpath and gullies for surface water to the front of the site.

- A Material Alteration of the Tullamore Town and Environs Development Plan 2010-2016 report was prepared recommending that a material contravention be advertised for a future council vote.

No objections to the material contravention were received and a report was prepared for the members of Offaly County Council with a recommendation to pass the material contravention by resolution in order to facilitate the proposed development.

- The final Planning Report noted that the application was discussed at a meeting of the County Council and that a resolution to allow the proposed

development was not passed. No reasons were given for this decision.
The report recommends that permission be refused.

3.2.2. Other Technical Reports:

Internal:

Ex. Planner: Recommends the issuing of a Section 97 Certificate.

Area Engineer: No objections to the proposed development subject to conditions.

Environment Water Services: No objections to the proposed development subject to conditions.

External:

HAS: The Health & Safety Authority does not advise against the granting of permission. The site is located within the outer zone of the SEVESO site.

4.0 Planning History

4.1. Subject site:

PL83.128129 (PA ref PD3547): Permission granted for the construction of 199 no. two storey houses, 8 no. duplex units above 8 ground floor apartments in 3 separate three storey blocks with associated site development works at Clara Road, Sragh, Tullamore, Co. Offaly.

Conditions attached to the grant of planning permission sought amendments to the overall development and ultimately, 168 residential units were constructed. The site the subject of this appeal was identified for the provision of a creche. This creche has not been developed. The Board included the following two conditions:

1. The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the drawings received by the planning authority on the 20th day of June, 2001 and on the 12th day of October, 2001 except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. The layout of the proposed development shall be that as shown on the drawing number PL100, Revision XX received by the planning authority on the 20th day of June, 2001 except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

The specific reference to the layout was included as the creche was omitted from the later layout plan.

5.0 Policy Context

5.1. Development Plan

5.1.1. The subject site is identified within the Tullamore Town and Environs Development Plan, 2010-2016, extended to 2020. The site is zoned open space and is located within an existing residential estate. This zoning objective provides that 'the use of land as 'Open Space' shall be taken to include the use of land for; afforestation, playgrounds, housing estate open spaces, parks and development incidental to the enjoyment of open space including sports centres, outdoor recreation centres and landscaped areas, the provision of shelters, walks, walls, sanitary conveniences, play equipment, dressing rooms and similar facilities. It also provides for the use of such land or such facilities for games, educational and recreational purposes. High standards of accessibility are essential.'

5.1.2. It is a stated objective of the plan, TTEO 15-02 refers, 'to ensure that development progresses in accordance with the landuse zoning objectives set out within this chapter (Chapter 15).' The zoning matrix provides that residential development is 'not normally permitted' on lands zoned open space. The surrounding lands are zoned residential.

5.2. Natural Heritage Designations

The subject site is located approximately 2km from the closest Special Area of Conservation, being Charleville Wood SAC, Site Code 000571. Charleville Wood is so designated being one of the very few ancient woodlands remaining in Ireland. Some parts of the woodland are considered undisturbed for at least 200 years.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first party appeal against the decision of the Planning Authority to refuse permission for the stated reason. The appeal document provides an introduction, details the location and context, planning history and considers the brownfield nature of the subject site. It is submitted that the subject site was never intended for use as open space and that there has been no opportunity to rectify the zoning error as the 2010 Development Plan was not reviewed, rather extended until 2020. The grounds of appeal are summarised as follows:

- The open space zoning is contrary to the proper planning and sustainable development of the area and should not be viewed in isolation.
- Section 37(2) of the Act is referenced and the appeal seeks to demonstrate compliance with the criteria of Section 37(2)(b) of the Act as follows:
 - Development of strategic or national importance:
While the proposed residential development is not of strategic or national importance, the delivery and supply of quality housing within serviced urban areas is. The proposed development would contribute towards the availability of sustainable residential development within a designated linked gateway settlement.
 - Conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned:
 - The submission seeks to identify conflicting objectives between the Offaly County Development Plan 2014-2020 and the Tullamore Town & Environs Development Plan 2010-2016.
 - The site can be categorised as both a brownfield and infill site which is at odds with the current open space zoning for the site.
 - Issues raised in relation to the open space zoning and flexibility principles, core strategy, settlement strategy of the Plan and National, Regional and Ministerial Guidelines.

- Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan:

Given that the Development Plan was adopted in 2010, and owing to the recession, there has been very few housing developments or planning permissions granted in the last 10 years in the area.

The subject site is however, located in a cul-de-sac residential location and a creche was permitted previously on the site. Services are available.

The appeal documents include a letter from the previous owners of the site who advised that services were constructed to facilitate the development of the site. It is submitted that while a creche was permitted on the site, it was ultimately not feasible to construct it as part of the overall development. The site never functioned or was designed as an open space area, and has been hoarded off since March, 2004.

6.2. Planning Authority Response

The Planning Authority submitted a response to the first party appeal advising that they would support the development of housing on this site notwithstanding the issue that the development is contrary to the existing zoning.

6.3. Observations

None

7.0 Assessment

7.1. Having regard to the nature of the proposed development, together with the information presented in support of the proposed development, I consider it appropriate to assess the proposal under the following headings:

- Principle of the proposed development, compliance with the Development Plan & Planning History
- Section 37(2) of the Planning & Development Act, 2000, as amended.
- Other Issues
- Appropriate Assessment

7.2. Principle of the proposed development, compliance with the Development Plan & Planning History.

7.2.1. The Board will note that the sole reason for refusal of the proposed development relates to the non compliance with the zoning objective afforded to the subject site in the Tullamore Town & Environs Development Plan, 2010-2016, extended to 2020. The site is zoned Open Space within the plan where residential developments are 'not normally permitted'. In principle, therefore, the proposed development is not permissible.

7.2.2. The planning history of the site provided for the construction of a large residential development, comprising 168 residential units, ABP ref PL81.128129 (PA ref PD3547) refers. As part of the planning application, the Board will note that the development was amended to include a Creche as part of the response to the further information request from the Planning Authority. The necessity for the creche arose in order that the development comply with the Child Care Act. The Child Care Act requires the provision of creche facilities at the rate of 20 spaces per 75 houses. In the context of the permitted development, a creche to facilitate 44.8 children. This grant of permission expired in May, 2007. The creche has not been constructed. The services for the creche however, appear to have been installed while the estate was being developed.

7.2.3. While I note the zoning afforded to the subject site, I would agree that it is not used as public open space and is fenced off with no public access available. In addition, it is a secluded part of the wider residential estate and given that it is walled and not connected to adjacent open space areas, it could not be considered as an appropriate public open space. It is, as submitted by both the applicant and indeed the Councils planning officer, a brownfield site.

7.2.4. In terms of looking to Section 37(2) of the Planning & Development Act, 2000 as amended, I would acknowledge the support of the Planning Department of Offaly County Council for the material contravention of the plan to support the development. I would also note however, that the resolution to allow the development was not passed by members of the County Council. There is no indication as to why or how this decision came about. In considering a positive decision with regard to the proposed development, it is necessary to consider if there are material planning matters arising which would justify the setting aside of the Development Plan zoning objective for the site.

7.3. **Section 37(2) of the Planning & Development Act, 2000, as amended**

7.3.1. Section 37(2) of the Planning & Development Act, 2000 as amended, states as follows:

37(2) (a) Subject to *paragraph (b)*, the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned,

or

(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under *section 28*, policy directives under *section 29*, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

(c) Where the Board grants a permission in accordance with *paragraph (b)*, the Board shall, in addition to the requirements of *section 34(10)*, indicate in its decision the main reasons and considerations for contravening materially the development plan.

Should the Board be minded to grant permission for the proposed development, the requirements of S37(2)(b) need to be established and the Board must satisfy itself that the stated criteria are met.

7.3.2. (i) The proposed development is of strategic or national importance:

The proposed development is for the construction of 5 residential units within an existing residential estate which currently has 168 houses constructed. It could not be considered that the development is of strategic or national importance. The appellant argues that a grant of permission would support the national need for quality housing in urban areas and would support national policy. This is a reasonable consideration.

7.3.3. (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned

The appellant has sought to demonstrate a wide range of conflicting objectives relating to residential development between the Offaly County Development Plan, 2014-2019 and the Tullamore Town & Environs Development Plan, 2010-2016, extended to 2020. In particular, the appellant seeks to put forward the conflict between the brownfield nature of the site and the open space zoning. I have

indicated above that I would accept that the site is brownfield and it is clearly not used as public open space. However, I would suggest that the matter in question relates to the zoning of the site rather than the nature of the site, either brownfield, infill or open space. The zoning afforded to the site is clear and was included in the Tullamore Town & Environs Development Plan in 2010, 8 years after the parent permission for the residential estate was granted, and at least 3 years after the permission expired and the creche was not constructed on the site.

While I note the thrust of the Offaly County Development Plan in terms of encouraging flexibility in the zoning principles, I would not consider it appropriate to materially contravene the zoning objective of the Tullamore Town & Environs Development Plan in 2010 on the basis of conflicting objectives in this instance.

- 7.3.4. (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under *section 28*, policy directives under *section 29*, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government

In terms of regional and national guidance, it is clear that the principle of the proposed development would be supported, subject to the wider proper planning and sustainable development of the area. The appellant has submitted that the development, if permitted would be consistent with both regional and national policies and guidelines given the location within an urban area. It is also clear that the development would provide necessary housing in the town. I would be slow however, to use the national housing shortage as a reason to grant permission to develop lands zoned for public open space.

- 7.3.5. (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

I suggest that should the Board be minded to grant permission for the proposed development, and materially contravene the zoning objective afforded to the site as provided for within the Tullamore Town & Environs Development Plan, 2010, it is on the grounds of the existing pattern of development in the area, and permissions granted, since the making of the development plan. In this regard, the Board will note

that the Development Plan was adopted in the middle of the recession and there is no record of any large scale residential developments in the vicinity of the site since its adoption. The pattern of development within the area is however, substantially residential in its nature, with a variety of house types constructed within a number of residential estates. In terms of Carraig Cluain, the development has been constructed in significant compliance with the conditions of planning permission, save for the construction of the creche. In terms of the pattern of development, and given the lack of planning permissions granted for residential developments since the adoption of the plan due to the recession, I am satisfied that the proposed development is acceptable in principle.

7.3.6. I consider that the Board can be satisfied that the development in principle is an appropriate form of development which can be accommodated on the subject site, notwithstanding the current open space zoning afforded to the site. Given the brownfield nature of the site, together with the existing pattern of development in the area, I consider it acceptable that the provisions of Section 37(2)(b) be applied.

7.4. Other Issues

7.4.1. Section 14.2.4 of the Tullamore Town & Environs Development Plan, 2010 deals with infill developments and the Board will note that such developments are encouraged. The plan requires that the design, height, scale, materials and finishes be compatible with existing adjacent properties and that the height of the building should be broadly similar to adjoining properties, particularly in relation to eaves and ridge roof levels. The two existing immediately adjacent houses are single storey, and a terrace of three two storey houses. The proposed development will provide for 2 pairs of semi-detached houses and a detached house. I have no objection in principle to the proposed design and the Board will note that the proposed design reflects the existing two storey houses in the wider estate.

Open Space Provision:

7.4.2. The proposed development seeks to construct 5 dwellings on an undeveloped site. In terms of the public open space provision within the wider estate, I estimate that there is approximately 8,300m² of open space provided, excluding the subject site. Of the 6 areas of open space, I would consider that two can facilitate informal

kick about areas. The estate is well landscaped and planted with trees and shrubs. The Tullamore Town & Environs Development Plan, 2010, requires 80m² per house is provided in a multiple housing scheme, or reserve a minimum of 15% of the site as recreational open space. In the context of Carraig Cluain, the open space requirement would be between 10,500m² – 13,440m². In this regard, it could be considered that the additional houses would be unacceptable. However, the wider area, including the other housing estates, provides for additional open spaces which I consider to be adequate to accommodate the proposed development.

7.4.3. In terms of private open space, the Tullamore Town & Environs Development Plan requires that 60-75m² is provided behind the building line for 3-5 bedroom houses. I am generally satisfied that the private open space proposed for each dwelling complies with this requirement. I note the requirement that rear gardens have a minimum depth of 11 metres, which is not achieved for any of the proposed houses. The plan provides that infill houses with shorter gardens may be permitted if in keeping with the context. The proposed rear gardens range in depth of between 7.744m to 9m. While other houses within the estate have gardens shorter than 11m, in the immediate context of the subject site, the gardens are generally of the required depth. I am generally satisfied that the proposed development can be considered as being acceptable, given the existing boundary treatments, which will prevent overlooking into the adjacent properties to the south.

Services

7.4.4. There is no issues arising in terms of the servicing of the subject site and the Board will note no objections to the proposed development subject to conditions, from the Area Engineer, Environment or Water Services sections of Offaly County Council.

7.4.5. The existing road network is in place and is adequate to accommodate the development as proposed. Should the Board be minded to grant permission in this instance, I recommend that the conditions indicated by the Area Engineer be included

7.5. Appropriate Assessment

The subject site is located approximately 2km from the closest Special Area of Conservation, being Charleville Wood SAC, Site Code 000571. Charleville Wood is so designated being one of the very few ancient woodlands remaining in Ireland. Some parts of the woodland are considered undisturbed for at least 200 years.

Having regard to the nature and scale of the proposed development and the nature of the receiving brownfield site within the wider established residential environment, 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. It is recommended that the proposed development be granted for the following stated reasons and considerations and subject to the stated conditions.

9.0 Reasons and Considerations

Having regard to the brownfield nature, and the location, of the subject site within the existing Carraig Cluain estate, together with the pattern of development in the area and the fact that the site is not, and would not appear to have ever been, a functional or operational public open space area, the Board is satisfied that the provisions of Section 37(2)(b) of the Planning & Development Act, 2000, as amended apply in this instance. A grant of permission in this instance constitutes a Material Contravention of the zoning afforded to the site in the Tullamore Town & Environs Development Plan, 2010-2016, extended to 2020.

The Board is further satisfied that, subject to compliance with the following conditions, the proposed development generally accords with the development standards requirements of the relevant plan as it relates to residential developments, would be acceptable in terms of servicing, traffic safety and would not injure the existing visual and residential amenities of properties in the vicinity of the site. It is further considered that the development would be acceptable in terms the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and by the further plans and particulars submitted on the 16th day of August, 2017, 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.

Reason: In the interest of clarity.

2. The footpath shall be dished at road junctions in accordance with the requirements of the planning authority. Details of the locations and materials to be used in such dishing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of pedestrian safety.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

Reason: In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the extended dwelling and in the interest of the amenities of the area.

5. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to

commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

6. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

A. Considine
Planning Inspector

4th March, 2018