



An
Bord
Pleanála

Inspector's Report ABP-300385-17

Development	Development will consist of the construction and development of 55 no. houses and associated site works
Location	Ballygrennan, Bruff, Co. Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	161184
Applicant	Ballygrennan Homes Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant	Ballygrennan Homes Ltd.
Observer	None.
Date of Site Inspection	12 th April 2018.
Inspector	Mairead Kenny

1.0 Site Location and Description

1.1. The green-field site, which is of stated area of 4.1561 hectares is located at the south of the village of Bruff in Co Limerick. The majority of the village is located to the north of the Morningstar River at which location there is a riverside walk. The site is to the south of the river in an area which is bisected by the regional road, which is the R512 Bruff to Killmallock Road. This area is historically of importance for educational as well as residential uses. Noteworthy buildings in the area include protected structures to the north of the site (the former Carbury Arms Hotel) and to the west (the Presbytery and St Marys Convent). To the north is an Architectural Conservation Area.

1.2. The north-western corner of the site, which is the point closest to the village is close to a crossroads formed by the regional road and local roads. At the opposite side of the regional road is a single-storey building which is a primary school, associated drop-off and parking area and a zebra crossing. To the south of the school is the Presbytery and a large plot of land, which is the former Convent secondary school, now partly in business and other uses but likely to be largely unoccupied. The western boundary is defined by the regional road. The northern boundary of the site follows the uneven boundary line of other properties in the Architectural Conservation Area. These buildings are attractive when viewed from the site notwithstanding that the view is of the rear facades. At the east and south the site boundary is set back from the edge of the overall land holding.

1.3. The site is within the 50 kph speed limits zone. There is a footpath on the opposite side of the road and the eastern side of the regional road where the site is located is defined by a stone wall. There are a few roadside trees.

1.4. Photographs of the site and surrounding area which were taken at the time of my inspection are enclosed.

2.0 Proposed Development

2.1. The original submission to the planning authority was for the development of 82 dwelling houses and the layout showed an indicative extension including houses

number 83 to 92 inclusive. The line of the distributor road was indicated as extending beyond the site boundary.

- 2.2. Permission as revised on foot of a request for further information and clarification of further information (received on 10th July 2017 and 3rd August 2017) is sought for development of 55 no. houses and associated site works. The site plan shows a range of detached, semi-detached and terraced two-storey houses. There is also an indicative layout shown which indicates how the development might be extended to the east.
- 2.3. At the western side of the site is a footpath which would be constructed within and outside of the defined site. To construct the footpath it is necessary to take down the existing stone boundary wall, which will be rebuilt and will achieve necessary sightlines.
- 2.4. At the southern side of the defined site is shown part of a future link road to the east and a reservation of lands to accommodate its extension to the edge of the site, stopping short of the edge of the land holding. The area to be constructed as part of the proposed development extends only half way along the southern site boundary.
- 2.5. Within the site boundary are two open spaces of significance. At the northern end of the site there is an area marked 'Zoned Green Space Lands' (green area 1). This is set out to include a car park and playground. Within the centre of the site is Green Area 5, which is described as a play area (mini sports).
- 2.6. The application documents include a number of noteworthy submissions received in response to the further information request. These include a TTA, mobility management plan and stage I RSA. Item 7 of the further information request is particularly significant and related to submission of a TTS, details of sight line, zebra crossing, footpath, parking spaces to serve the primary school, details of design of distributor road to include a cycle track.
- 2.7. The clarification of further information concerned in particular the construction of the 25 space car parking area and completion of the distributor road to the eastern side boundary. The applicant agreed to construct at his own expense the parking area but stated that completion of distributor roads to the eastern boundary would be financially unviable.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 43 conditions including:

- contribution under DCS in amount of €147,548.00 (condition 2)
- provision of 25 space car park and playground in accordance with phasing plan submitted on 10th of July 2017 and at the developer's expense (condition 5)
- distributor roads including footpath and cycle lanes shall be constructed along the full length of southern site boundary – revised plans to be agreed (condition 6)
- no units to be occupied until works to R512 including removal and reinstatement along the site boundary, installation of footpath, traffic calming measures, upgrade works to zebra crossing and public lighting completed in full – these works to be completed at developer's own expense (condition 7)
- upgrade of zebra crossing to NRA standards to allow for adequate standing/waiting areas for pedestrians and other works including lighting, which are specified – full details to be submitted and agreed in writing prior to commencement (condition 35).

3.2. Planning Authority Reports

3.2.1. Planning Reports

In response to the submission of further information and clarification of further information the development was deemed to be acceptable subject to completion of the distributor road to the eastern boundary, which it was considered should be addressed by condition.

3.2.2. Other Technical Reports

Planning and Environmental Services indicate no objection subject to conditions.

Archaeology – recommends conditions if permission is granted.

Operations and Maintenance Services – detailed recommendation and comments in response to roads and traffic details submitted by further information.

Conservation Officer – further information needed in relation to architectural conservation area.

Physical Development Directorate notes that there is some residual risk of flooding at the north-west corner of the site.

3.3. Prescribed Bodies

DCHG - recommendations regarding badger site survey and protection of water quality of the river, including consultation with IFI and / or EPA.

Irish water – no objection subject to conditions.

3.4. Third Party Observations

Scoil Dean Cussen – requests that road traffic management plan in the vicinity of the school be put in place to address in particular the drop-off and pickup times during the school year.

4.0 Planning History

The previous application for 78 houses, 13 apartments and childcare facility at this site was considered under reg. ref. 08/1028. The decision of the planning authority to grant permission did not include a specific condition relating to the Distributor Road but the full line of the route was indicated on the revised (further information) submission of 22nd January 2009. Full details of the application are not available to me at the time of writing.

The board has considered two appeals related to lands across the road. Under PL236317 related to amendment to a previous permission at another site and related solely to a detail of services.

PL127018 related to an application for permission for 50 houses in 2001 at a site south of the secondary school.

06/271 and 14/284 both relate to the adjacent lands and relatively small proposals.

5.0 Policy Context

Development Contribution Scheme 2017-2021 – adopted on 20th January 2017

Appendix B lists a sample of projects to be funded – including Distributor Roads as identified in Local Area Plans.

Limerick County Development Plan 2010-2016

The plan has been extended pending preparation of a plan for the city and county.

Bruff is designated as a Tier 4 town

Bruff local area plan 2012 – 2018 – extended to 2022

The site zoning is mainly residential. An area to the north is defined as green space lands and to the south and east as agricultural. The former convent lands at the opposite side of the regional road is identified as an opportunity area deemed most suitable for community services and possibly small scale employment enterprise.

Objective T1 refers to movement and accessibility and notes that the alignment of new roads is indicative only.

Objective T2 refers to the provision of pedestrian and cycling facilities.

Objective T4 refers to provision of off-street parking areas to be encouraged as part of any application for development and in particular the areas indicated as P on map 1. The areas marked P are in the town centre lands. None relate to the site.

Map 1 shows the indicative line of the distributor route, which passes through the zoned lands at the southern end of this site.

5.1. Natural Heritage Designations

The Glen Bog SAC and pNHA is 3.4 km from the site.

The River Shannon and River Fergus Estuaries SPA is about 2.5km from the site.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal is against conditions 2, 5, 6, 7 and 35 and includes the following points:

- the net impact of condition 2 considered in conjunction with conditions 5, 6, 7 and 35 amounts to double charging
- condition 2 is being appealed to ensure that an offset against development contributions can be facilitated should the Board consider the works required under conditions 5, 6, 7 and 35 are necessary
- condition 5 relating to the provision of a 25 space car park and a playground developer's expense – the cost of providing this community infrastructure should be offset against the development contributions levied on the development under condition 2
- conditions 6 requiring construction of the distributor road including footpath and cycle path along the full length of the southern site boundary does not seek to benefit the proposed development in any way and should be provided by the local authority at their own expense sometime in the future – condition 6 should be removed
- condition 7 requires works to the R512 – applicant is agreeable to certain works stated in this condition but it is submitted that there are additional works including traffic calming measures, public lighting upgrade and zebra crossing upgrade works which are required and which are over and above the needs of the development – such works should be undertaken by the planning authority and the appropriate mechanism for delivery of such works is by way of a special development contribution – accordingly condition 7 should be removed
- condition 35 requires works to existing zebra crossing on R512 – the upgrade works will not only serve the development – the cost of upgrading such infrastructure should be offset against any development contributions levied or alternatively undertaken by the council

- the effect of condition 2 has the effect of levying €2,682.69 per house, which can be carried by the development
- the cumulative impact of all site conditions increases the levy per unit to €14,409.96 – the additional €11,727.27 per unit cannot be carried on a house in a rural town such as Bruff the development proposal is uneconomical and unviable having regard to the excessive cost of infrastructure required to be delivered
- the background to the application is outlined in further detail
- There is also an estimate of costs of the community facilities and roadworks which has been provided by a chartered quantity surveyor.

6.2. Planning Authority Response

A letter was issued by the Board under Section 132 requesting a breakdown of the Development Contributions. No response received to Section 132 or to appeal.

6.3. Observations

None.

7.0 Assessment

7.1. Introduction

- 7.1.1. The site is within a small town, is zoned mainly for residential development and is generally satisfactory in terms of layout and density. There is a residual flooding issue which relates only to part of the site which is designated as open space. None of the internal reports of the officials of the planning authority raise issues of significance other than those which have been resolved in the application or are relevant to the conditions under appeal. I consider that there is no requirement for *de novo* consideration of this appeal. I will consider each of the conditions under appeal separately.

7.2. Condition 2

7.2.1. This relates to the Development Contribution Scheme. An offset against development contributions is requested should the Board consider that the works required under conditions 5, 6, 7 and 35 together with the amount payable under condition 2 amount to 'double charging'. The appeal is not related to the application of the Scheme. The appellant acknowledges that 'the financial contribution has been calculated in accordance with the adopted development contribution scheme'. The Board has no further jurisdiction on this matter. Condition 2 has been attached by the planning authority and is correctly applied in accordance with the Scheme and should stand.

7.2.2. I recommend that condition 2 be retained.

7.3. Condition 5

7.3.1. This requires the construction at the developer's expense of the playground and car park. The applicant commitment to construction of these facilities at his own expense but that was stated to be on the assumption that the cost would be offset against the DSC contribution. No such mechanism can be pursued by the Board.

7.3.2. I agree that the evidence points to the car park being required in association with the use of the school. In my opinion there is no basis this condition (insofar as it relates to the car park) as it is not relevant to the development in question and is not an objective of the LAP. There is nothing to prevent the local authority separately pursuing this matter but it is not appropriate to be considered under this permission.

7.3.3. The playground would be mainly used by local persons and in particular by the occupants of the proposed housing scheme. I consider that condition 5 is reasonable insofar as it relates to the playground.

7.3.4. Condition 5 should therefore be amended.

7.4. Condition 6

7.4.1. This condition relates to the construction of the distributor road along the full length of the southern site boundary. This requirement is considered by the applicant to be

excessive and to potentially create a nuisance pending future development of lands to the east, which is not likely to occur in the near future.

7.4.2. The estate will be taken in charge as required by national policy and as is clear from other conditions on the decision of the planning authority. The construction of the distributor route to the site boundary is not necessary to serve the development. I agree with the appellant that the condition is not reasonable. It is however necessary to ensure that the control of the land falls to the local authority and that the future occupants of the estate are left in no doubt as to the long-term plans for this land. I consider that this matter can be addressed under the taking in charge process.

7.4.3. I recommend that condition 6 be amended accordingly.

7.5. **Condition 7**

7.5.1. There are two main elements to condition 7. In my opinion the proposed traffic calming, road resurfacing and upgrading of the zebra crossing are not works which are necessary or related to the development. The road is straight and the site is within the 50kph zone. The road is not especially poorly surfaced or otherwise deficient. It is not in my opinion reasonable that the developer be required to fund these works.

7.5.2. However, I consider that the development of a setback along the western site boundary is necessary to ensure sightlines and in the interest of traffic safety along the regional road and the proposed footpath would serve future occupants and can reasonably be stated to be connected with the development.

7.5.3. I recommend that condition 7 be amended to reflect the above.

7.6. **Condition 35**

7.6.1. This relates solely to the zebra crossing. As outlined above I do not consider that the payment for this upgrade should fall to the future developer of the proposed development and I recommend that this condition be omitted.

8.0 Recommendation

8.1. I recommend a draft order as follows.

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, under subsection (1) of section 139 of the Planning and Development Act, 2000, directs the said Council, based on the reasons and considerations set out below to ATTACH the said condition number 2, to AMEND conditions 5, 6 and 7 as below and to OMIT condition 35.

8.1.1.1. REASONS AND CONSIDERATIONS

Having regard to the nature, scale and location of the proposed residential development within a 50kph speed limit zone, to general adequacy of the regional road and to the provisions of the Development Contributions Scheme for Limerick County, it is considered that the level of works required by the conditions and the financial burden arising are unreasonable and not necessary for the purposes of the proposed development.

The Board considered that the development would be acceptable in terms of traffic safety subject to the amendments contained in this order.

The Board considered that the provision of the 25 space car park and the completion of the Distributor Road to the eastern site boundary could be pursued by the local authority subject to the transfer of lands through the taking in charge procedures.

8.1.1.2. CONDITIONS

5. The playground shall be constructed in accordance with the phasing plan submitted to the planning authority on the 10th of July 2017 and at the developer's own expense.

Reason: To provide for the amenity requirements of future occupants.

6. The development hereby permitted shall be carried out and completed at least to the construction standards required by the planning authority. Prior to commencement of any development on the site the developer shall identify all lands to be taken in charge by the local authority. This shall include lands to be reserved for completion of the Distributor Road including associated footpaths and cyclepaths to the eastern site boundary. Pending the future construction of the Distributor Road to the eastern site boundary, the lands shall be planted with grass and maintained temporarily as open space. In default of agreement this matter shall be referred to An Bord Pleanála for determination.

Reason: To facilitate the completion of the Distributor Road.

7. No units shall be occupied on site until the works to the R512 comprising removal and reinstatement of the roadside boundary wall and installation of footpath and public lighting is completed in full. This work shall be undertaken at the developer's own expense.

Reason: In the interest of traffic safety.

Mairead Kenny

Senior Planning Inspector

18th April 2018