



An
Bord
Pleanála

Inspector's Report ABP.301264-18

Development	Construction of 3-storey apartment block, comprising 35 no. 1 and 2 bedroom units to provide housing for elderly persons, single storey creche facility, internal access road, car parking, landscaping, boundary treatment and associated site works
Location	Bloomfield, Annacotty Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	17/1234
Applicant(s)	Bloomfield Homes Ltd.
Type of Application	Planning permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Bloomfield Homes Ltd.
Observer(s)	None
Date of Site Inspection	8 th June 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located to the south of the R445 at Annacotty, directly adjacent to Castletroy Neighbourhood Park. It forms part of a larger housing development which is being developed in phases at Bloomfield, which skirts the M7 to the south. The site of the appeal forms part of a larger residential development site which is currently under construction by Bloomfield Homes. The lands to the north and west of this development site have been developed as a housing estate which fronts onto Castletroy College Road. The M7 forms the southern boundary of the lands and Castletroy Neighbourhood Park forms the eastern boundary.
- 1.2.** The L-shaped site occupies the south-eastern corner of the overall lands outlined in blue. The permitted development under construction (16/1154) includes the provision of a proposed creche on the eastern portion of the L-shaped site, directly abutting the park, and an open space buffer, with a large berm, along the southern portion of the site. The northern boundary of the site (eastern portion of L) would be with the side elevation of houses within Elm Drive and the western boundary would face the front of houses also on Elm Drive. The northern boundary (southern portion of L) would face houses on Willow Drive.

2.0 Proposed Development

- 2.1.** It is proposed to erect a three-storey block of apartments for elderly persons on the site of the approved creche, and to relocate the proposed creche to the southern portion of the site. It is proposed to provide a linear shaped car park to the east of the creche and the south of the apartments, with a further car park to the west of the creche. The western side of Elm Drive turns into Willow Drive at the southern end, and this road would serve the proposed apartments and the creche. The eastern side of Elm Drive is to be served by a cul-de-sac, which would also serve the rear of the proposed apartment block. The creche would also be accessed from the west via Willow Drive. The proposed carpark for the creche would be to the west of the building. Access to both Elm and Willow Drives is from Oak Drive which connects with Castletroy College Road at the entrance to the estate. It is also proposed to provide pedestrian access to the Neighbourhood Park to the north of the apartments.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for one reason which reads as follows:

It is considered that the proposed development, located in close proximity to the M7 motorway, would seriously injure the amenities of future residents/occupants by way of noise and nuisance resulting from the proximity of the motorway and as such would be contrary to the proper planning and development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It was noted that the apartment block had been removed from the previous proposed development by condition, and the creche was required to be located a minimum of 90m away from the nearside edge of the M7 (16/1154). The following comments were also made:-

- The current design for the creche shows no windows on the southern elevation. However, the proposed creche is located in approximately the same position as that required to be omitted from the previous scheme.
- The predicted daytime external noise levels were noted as ranging from 53-58dBLAeq 16 hour for some ground floor apartments to 62-66dB LAeq 16 hour for some second floor apartments. It was further noted that the night time levels would range from 46-50dBLAeq 8hour to 53-59dBLAeq8 hour.
- The internal day time and night time noise levels with partially open windows would be 10dB above levels desired for rest under BS8233. The proposed earthen berm would not mitigate against noise where there is a direct line of sight between the road and the apartment block. It is considered that the proposed apartment block relies on closed windows and that it would be unreasonable to expect elderly persons not to be able to open windows.
- The recommended noise levels for class within the creche are 35dB whereas the predicted façade noise levels are in the range of 56-58dB. Thus, the

recommended level will only be achievable with closed windows and doors, which would be a limitation for a creche. The recommended maximum outdoor noise level for the creche is 55dB-60dB and the likely external daytime level will exceed this.

- The main mitigation measure for the creche is the earthen berm, but this will have a limited ability to reduce low frequency noise levels. It is considered that it is likely that the road noise would contain a high level of low frequency noise, and as such, a lower guideline level should be applied. It was concluded that the predicted 55 dB noise level would be too high for the outdoor play area.
- The road noise levels are likely to increase in the future as the road is currently carrying volumes below capacity and the population of the area is expected to grow significantly.

It was concluded that the proposed development should be refused.

3.2.2. Other Technical Reports

Environment – no objection subject to conditions re waste management.

Archaeology – There are no recorded monuments but there is a possibility of disturbing unknown archaeology. Consequently, there are is no objection subject to archaeological monitoring.

Physical development – recommendation to refuse agreed.

3.3. Prescribed Bodies

Irish Water (10/2/18) – no objection subject to standard conditions.

Mid-West National Road Design Office (16/2/18) – part of the proposed development lies within the 90m setback requirement. The P.A. should therefore be satisfied that the noise issues have been adequately addressed having regard to the Environmental Noise Regulations. Furthermore, the existing motorway boundaries should not be altered in any way and should be located within the boundary of the site, with adequate space being retained for maintenance purposes.

Transport Infrastructure Ireland (15/2/18) – no objection subject to compliance with national policy as set out in Spatial Planning and National Roads Guidelines for Planning Authorities (2012), and no future claims in respect of noise and visual impacts etc. from the existing or any future roads on the proposed development.

3.4. Third Party Observations

None.

4.0 Planning History

16/1154 – planning permission granted for construction of 95 no. houses and a creche in September 2017. Condition 4 of the permission required the omission of an apartment block of 35 units for elderly residents and the relocation of a proposed creche (and associated parking) to the site of the proposed apartments, and that the creche be sited a minimum of 90m away from the M7. It was required that the remaining areas be landscaped as public open space.

234306 – planning permission granted for 86 houses on the southern part of Bloomfield following a third-party appeal (09/374), which included a proposal to erect a 5m high earthen berm along the southern boundary. Condition 2 required the omission of several units, but specifically required the omission of units 132-135 and a new planning application to be submitted for a creche facility at that location Cond2(d). The reason was in the interest of residential amenity, to provide an adequate set back from the Southern Ring Road, to provide public open space within the site and a creche facility for the development. Condition 8 required the implementation of the noise mitigation as submitted and the replacement of a proposed timber fence attenuation measure at the top of the embankment with a solid wall, in the interests of residential and visual amenities.

14/7045 – extension of duration granted in respect of 09/374 until 2019.

5.0 Policy Context

5.1. Development Plan

Limerick County Development Plan 2010-2016 (as extended)

Castletroy Local Area Plan 2009 - 20158 (as extended) –

The site is zoned Existing Residential, the objective for which is “To ensure that new development is compatible with adjacent uses and protect the amenity of existing residential areas.” The proposed development is supported by the Core Strategy which seeks to encourage the development of sustainable neighbourhoods and the provision of high quality accommodation, and to increase residential density where it is appropriate to do so.

Relevant policies include

Policy H1 New Housing Development – which seeks to provide for a range of house types, well designed public open space and high quality residential layouts in accordance with DoEHLG guidance on sustainable residential development.

Policy H6 Childcare Facilities – provide appropriate purpose built childcare facilities as an integral part of proposals for new development.

5.2. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2015.

5.3. Natural Heritage Designations

The River Shannon SAC is located approx. 750m from the site, to the east. It is separated from the site of the proposed development by the neighbourhood park and further residential development.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal was submitted by Simon Clear Planning Consultancy on behalf of the applicant. It also included a report from AWN incorporating a Noise Impact Assessment. The main points raised by Simon Clear Associates may be summarised as follows:

- Conflict between internal and external noise standards – The refusal of permission is based on the assessment of external noise levels at the facades of buildings against internal noise level standards used in the applicant’s NIA. The P.A. decision is on the basis that achieving appropriate internal noise standards in the apartment block is reliant on closed windows in the apartment block. However, this negates the impact of the proposed mitigation measures.
- Mitigation measures proposed – Measures include upgraded glazing and passive ventilation systems, as well as the 5m high earthen berm along the boundary with the M7. In addition, the design of the proposed apartment block has been revised in terms of orientation, setback distances etc., to ensure that the quality of the internal environment is at the highest level. These measures will ensure an acceptable standard of residential amenity internally, similar to that envisaged in the Limerick Noise Action Plan 2013. The noise design goals (BS8233) can be achieved and the rooms can be adequately ventilated in a closed window scenario.
- Climate controlled buildings - The development has been designed to achieve a high energy efficiency rating using climate control and effective insulation. This depends on an airtight design. It is accepted however that in some cases windows will have to be kept closed to achieve the design goals, in which case passive ventilation will be required. There is no question of windows being “unopenable”. It is claimed that ‘open window ventilation’ is purely a personal choice and that this has to be balanced against other factors, such as a reduction in energy efficiency. However, it is emphasised that the

development has been designed such that there would be no need to open windows

- Precedent – refusal on these grounds would have huge implications for this development and for other sites, as those sites which exceed the external noise parameters would effectively be sterilised.

The **Noise Impact Assessment** (AWN) referenced the guidance to which it had regard as the Limerick Noise Action Plan 2013 and the BS8233 : 2014 standards for internal noise environments. It noted that a 90m setback from the motorway was required to curtail noise disturbance, but that a shorter distance may be permitted where mitigation measures are employed. The onset level for mitigation in the Limerick NAP is 70dB Lden and 57dB night. However, given that these are external noise levels and that the EPA Guidance Note for Noise Action Planning refer to BS8233, which relate to internal noise levels, it was decided to reference these standards in respect of the proposed development.

A detailed noise model was developed based on site surveys and the proposed layout and the predicted noise levels at the facades were used to determine the internal noise levels within living room and bedroom spaces. The appropriate BS standards were considered to be as follows:

Day (0700-2300) Living/Bedrooms/Resting – 35dB LAeq16hours

Night (2300-0700) Bedrooms/Sleeping – 30dB LAeq8 hours.

Creche outdoor amenity area – 55dB LAeq16hours.

Mitigation Measures which would be required to ensure that these standards are met included the following:

- The establishment of an earthen berm along the southern site boundary.
- Acoustic glazing and ventilation elements incorporated into apartment design
- Balconies on the most exposed side to be converted to winter gardens.

6.2. Planning Authority Response

The P.A. has not responded to the grounds of appeal.

7.0 Assessment

7.1. It is considered that the main issues arising from the appeal are as follows:-

- Residential amenity of future occupiers of the apartment block
- Amenity of the future occupiers of the creche.
- Compliance with conditions of previous planning permission(s)
- Appropriate assessment

7.2. Apartment block – residential amenity

7.2.1 The location of the site on residentially zoned and serviced land, within an established housing area, which is very well served by amenities and social infrastructure means that the development of the site as an apartment development for the elderly is acceptable in principle. Furthermore, it is a requirement of the previous planning permissions on the site that a creche be provided to serve the overall development. Thus, the provision of an apartment block and creche within the overall lands is accepted by all parties to be in accordance with the planning policy framework for the area. This seems reasonable.

7.2.2 The applicant acknowledges that the apartment block and the creche are located within the 90m setback distance from the motorway, but considers that an exception can be made given that mitigation measures are proposed which will enable the internal noise levels (as set out in BS8233) to be met. However, it is further acknowledged that these measures will only be achievable in a 'closed window scenario', but that the building would be designed to a very high energy rating specification, which would allow it to operate with climate control technology, thereby obviating the need to open windows. The planning authority, however, considers that the noise levels at the external facades are such that the mitigation measures would not be adequate in an open window scenario, and that it would be unreasonable to expect the future elderly residents not to be able to open a window.

7.2.3 It is noted that the results of the baseline survey indicate that the existing Day, Evening and Night time noise levels are 67-69dB LAeq, 65-67dB LAeq and 61dB LAeq, respectively. These levels seem reasonably consistent with the TII Noise Maps on the TII website. The predicted façade noise modelling (submitted with the

grounds of appeal) included an additional 2dB to account for a potential 50% increase in AADT on the M7 in the future, and also incorporated the screening effect of the existing earthen bund. The results of the predicted façade noise levels are set out in Section 6.0 (Table 2) of the NIA. I make the following observations:

- The daytime noise levels range from 51dB to 71dB. However, there are only two apartment facades which fall within the extreme levels. The majority of the facades are predicted to fall within the 60-65dB (16 no.) and 66-70dB (16 no.), with 5 no. facades within the 55-60dB range.
- The night-time noise levels range from 44-63dB. However, the majority fall within the 56-60dB range (22 no. facades), and 14 no. facades fall within 51-55dB and 6 no. within the 61-65dB range
- The creche façade is predicted to experience noise levels in the range of 61-63dB during the day; and the majority of the outdoor area will fall within 55dB.
- The most exposed balconies would be converted to winter gardens with secondary glazing, which would provide a reduction of noise levels to 55dB with the external screens closed.

It was considered that, in terms of the P.A. reason for refusal, the achievement of design goals with windows open is impractical and contrary to best practice. It was stated that a partially open window would typically provide a sound level difference of 10-15dB, which would require façade levels of 45-50dB (Day) and 40-45dB (night) in order for the internal noise levels of 35/30dB to be achieved. It was submitted that this would restrict development well in excess of the 90m setback distance.

7.2.4 It is considered that the predicted external façade noise levels are very high for a significant number of apartments. Should these noise levels be converted to Lden levels, (which is the measurement used in the NRA Guidelines for the Treatment of Noise and Vibration in National Road Schemes (2004) and in the subsequent NRA Good Practice Guidance in respect of traffic noise), they would almost certainly trigger the requirement for mitigation measures set out in the Limerick Joint NAP (70dB Lden). This NAP has been prepared in accordance with the Environmental Noise Regulations, which in turn are based on the Environmental Noise Directive (2002/49/EC). This Directive seeks to identify sources of environmental noise and to take the necessary steps to avoid, prevent or reduce noise exposure, particularly in

residential areas. Although the applicant submits that with mitigation as proposed, the internal noise environment would be appropriate and acceptable in terms of residential amenity.

However, considerable doubt remains as to whether these mitigation measures would be sufficiently effective, and therefore adequate, given that it would necessitate a closed window environment for the measures to take effect. I would agree with the P.A. that it would be unreasonable to expect permanent residents of the apartments not to want to open a window, and although the applicant states that it would be a personal choice, it is clear that in exercising that choice, the mitigation measures would be negated. I further note that the design statement (pages 11-12 of the planning report submitted with the application), indicates that the central communal area which links to a courtyard and communal gardens are an integral part of the development which are designed to provide a space to encourage the elderly residents to socialise and to use the outdoor spaces. It is not clear from the submissions whether the noise levels in these spaces would be prohibitively high such that the residents would be discouraged from using the spaces. It is further considered that the winter gardens, although providing attenuation of 10-15dB, would only provide acceptable noise levels if the screens remain closed.

7.2.5 The Noise Action Plan (8.5) accepts that the use of sound insulating glazing can provide further protection against noise if no other measures can be applied or if the effect of other measures are insufficient. However, it is stated that

“windows must be kept closed to be effective. Assisted ventilation is therefore required to avoid poor ventilation and the associated problems of condensation and dampness. This option is expensive to implement and can often cause greater annoyance and inconvenience to residents in the long term.”

There is a requirement set out in both the Limerick City and County Development Plan (Development Management , Table 10.9) and the Limerick Noise Action Plan 2013, that a 90 metre setback be maintained between residential developments and the new national primary roads. It is noted that the proposed apartment block would be located approx. 60 metres from the nearest lane of the motorway.

7.2.6 Given that the proposed apartment block is a new development on a greenfield site, and that the source of the environmental noise (traffic on the M7) is pre-existing, it is

considered that the proposed development should comply with the 90 metre setback required by the NAP and the CDP. Although there is provision for development to be located closer to national primary road, this is dependent on acceptable noise levels being achieved. In light of the foregoing, it is considered that acceptable noise levels in an open window scenario cannot be achieved in all circumstances, and as such, there is no justification for relaxing the setback. As such, the siting of the apartment block as proposed would result in a substandard development, whereby the amenities of the future occupants would be severely compromised.

7.3. Amenity of occupiers of creche

- 7.3.1 The proposed creche would be located approx. 25m from the nearest lane of the motorway and would back directly onto the 5m high berm. It is predicted that the outdoor play area would achieve 55dB_LA_{eq} for most of its surface area. However, I note from the NAP (2.1.6) that the WHO Guidelines describe this noise level for outdoor living areas as “serious annoyance”. The southern elevation would face the landscaping berm, which would be an overbearing feature and would result in a relatively poor quality aspect and outlook. I also note that Condition 8(b) of the Board’s decision (234306) required the timber fence at the top of the berm to be replaced with a solid wall. However, the submitted drawings (Drg. No. 17:110:750) indicate that the berm is to be topped with a wire mesh fence.
- 7.3.2 The Area Planner considered that the noise environment for the vulnerable users of the creche at 55dB_LA_{eq} would be unacceptable in the outdoor play area. I would agree with this view. Given that the Board and the planning authority had each previously required the creche to be located 90m away from the motorway, and that the NAP considers that educational facilities should be designated as noise sensitive, it is considered that the siting of the creche in this location would result in substandard development., whereby the amenity of the future occupants would be severely compromised.

7.4 Compliance with conditions of previous planning permissions

- 7.4.1 The Board granted permission for the development of the overall lands under 234306, subject to conditions. Condition 2 required the omission of several groups of units and alteration to the layout. Specifically, Condition 2(d) required the omission of Units 132-135 and the submission of a new planning application for a creche facility

at this location. The stated reason for the condition was in the interest of residential amenity, to provide an adequate set back from the Southern Ring Road and to provide public open space within the site, and a creche facility for the development. It is considered that the current development proposal before the Board materially contravenes the terms of this condition.

7.4.2 As stated previously, Condition 8 (b) of the same permission required the replacement of a timber acoustic fence at the top of the berm with a solid wall and the proposal before the board indicates a wire mesh fence. Whilst it is accepted that this matter could be addressed by means of a condition attached to any planning permission, should the board be minded to grant permission, it is considered that the proposed drawings, as submitted, are contrary to the requirements of a condition of a previous permission.

7.4.3 Condition 4 of the Planning Authority's permission Reg. Ref 16/1154 for 95 dwellings and a creche, (which included a 35 unit apartment block for elderly residents in a similar location) reads as follows:

4. The 35 no. apartments and associated car parking shall be omitted and the creche and associated car parking shall be relocated to this location. The creche building shall be a minimum of 90 metres from the road edge of the Southern Ring Road. The remaining areas shall be landscaped as part of public open space. Prior to commencement of the development revised plans shall be submitted for the written agreement of the planning authority.

Reason – In the interest of residential amenity, to provide an adequate set back from the Southern Ring Road.

It is noted that this condition was not appealed. It is considered that the development proposal currently before the Board materially contravenes the terms of this condition.

7.5 Appropriate Assessment

7.5.1 The site is located approximately 750m from the Mulkear River, which forms part of a Natura 2000 site, namely, Lower Shannon SAC. Given the distances involved, and as the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

- 8.1.** It is recommended that planning permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The proposed development materially contravenes the terms of Condition No. 2(d) of the planning permission granted by the Board on the 21st day of December 2009 under Reference PL13.234306, and of the terms of Condition No. 4 of the planning permission granted by the planning authority on the 28th day of September 2017 under Reg. Ref. 16/1154.
2. Having regard to the siting of the proposed apartment block and creche facility in close proximity to the M7 motorway, it is considered that the proposed development would result in unacceptable noise levels at the external facades of the proposed apartments, notwithstanding the proposed mitigation measures, and in the outdoor amenity areas of both the residential development and of the creche facility, which would seriously injure the amenities of the apartments and of the creche facility, and would result in inadequate useable outdoor amenity space for the future occupiers of the site. The proposed development would, therefore, be contrary to the provisions of the Castletroy Local Area Plan (2009-2015 as extended) and the Limerick County Development Plan 2010-2016 (as extended) and to the proper planning and sustainable development of the area.

Mary Kennelly
Senior Planning Inspector

28th June 2018