



An
Bord
Pleanála

Inspector's Report

ABP-305437-19

Development	Construction of 3 mixed use commercial buildings
Location	Smithstown Road , Smithstown , Shannon, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	19155
Applicant(s)	Currana Investments Ltd
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Hickey Families
Observer(s)	Pat McAllen
Date of Site Inspection	06 th December 2019
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 1.15 hectares, is located to the north of Shannon and on the southern side of the Smithstown Road (LP-3170). The appeal site is a rectangular shaped site currently in agricultural use. The site is defined by existing boundaries of hedgerow and trees and an embankment along the northern/roadside boundary. A pedestrian path runs along the southern boundary of the site. Adjoining uses/properties include a single-storey dwelling adjoining the eastern boundary, to the west the site is adjoined by a nursery/garden centre premise (off the Smithstown Road) and a single-storey dwelling (appellants' dwelling), which is off a public road to the east of the site that also serves the recycling centre and provides access to the pedestrian path along the southern boundary. To the south of the site are undeveloped agricultural lands zoned for residential use. To the north and on the opposite side of the Smithstown Road is the Smithstown Industrial Estate with a number of commercial properties.

2.0 Proposed Development

2.1. Permission is sought for the construction of 3 no. mixed commercial buildings (total floor area of 4,450sqm) comprising industrial, light industrial. Storage, warehousing uses with ancillary office accommodation, new site entrance and exit, 82 no. on-site parking spaces and connection to existing utilities together with associated site works. The design of the proposal was revised including changes to the elevations (north eastern corner), relocation of refuse storage on site and increased car parking providing for 90 spaces.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 11 conditions. Of note are the following conditions...

Condition 3: Details of future occupants to be agreed, noise emission limits.

Condition 4: Revised external finishes to the rear of each unit to match that of the front and side.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (26/04/19): Further information required including revised access proposals to deal with traffic safety concerns/proximity to junction with industrial estate, details of visibility at the entrance, provision of parking in accordance with the Development Plan, a lighting plan, provision of footpath of adequate width, details of traffic signage, revised location for refuse storage to the south west of the site, revisions to deal with overlooking of adjoining properties, removal of a delivery bay in close proximity to an adjoining dwelling, revised proposals to include more surveillance of the pathway to the rear, a landscaping plans and additional details regarding wastewater and surface water management.

Planning Report (20/08/19): The proposal was considered to be acceptable in regards to land use policy, visual amenity, the amenities of adjoining properties and traffic safety. A grant of permission was recommended subject to the conditions outlined above.

3.2.2. Other Technical Reports

Irish Water (12/04/19): Further information required regarding wastewater.

Irish Water (15/07/19) No objection subject to conditions.

Road Design Office (16/08/19): No objection.

3.3. Prescribed Bodies

TII (02/08/19): No observations.

GSI (26/07/19): No impact on any County Geological Sites.

3.4. **Third Party Observations**

Submissions were received from...

Hickey Families.

Pat McAllen

James Quinn

Margaret Marcus

The issues raised can be summarised as follows...

- Overbearing physical impact, reduced residential amenities through loss of privacy, noise, general disturbance, traffic impact lack of infrastructure, impact on the character of the area.

4.0 **Planning History**

PL03.111571 (99/404): Permission refused for a two-storey showroom and offices. Permission refused based one reason.

1. Having regard to the proximity of existing houses to the site, it is considered that the proposed development, by reason of its size and the nature of its use, would seriously injure the amenities and depreciate the value of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and development of the area.

97/595: Permission refused to construct an industrial facility including offices, entrance and associated site works. Refused based on three reasons including being contrary land use zoning objective, being located outside the core industrial/commercial area and adverse impact on adjoining dwellings.

97/274: Permission refused to construct a warehouse facility including offices, entrance and associated site works. Refused based on three reasons including being contrary land use zoning objective, being located outside the core industrial/commercial area and adverse impact on adjoining dwellings.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Shannon Town and Environs Local Area Plan 2012-2018. The site is zoned 'Commercial'.

Commercial

The use of commercially zoned lands shall be taken to include the use of land for commercial and business uses, including retail, office, service industry, warehousing and the facilitation of enterprise/retail park/office park type uses, as appropriate. It is important to reserve these lands for possible commercial and/or business uses and redirect other uses where it is considered that such uses would be more appropriately sited within other land zoning categories.

Retailing is open for consideration in this area, provided an appropriate sequential test is carried out and that the lands are demonstrably the optimum location for the proposed development. The development must not detract from the vibrancy and vitality of the identified town centre and the development must be in accordance with the Retail Strategy for the Mid-West Region 2010-2016, or any subsequent strategy.

Objective LAP 2.1

To increase the appeal of central areas, the town centre and town park.

COM1 East of Town Centre

These commercial zoned lands are located east of the town centre and south of Smithstown. The southern part of these lands (fronting onto Bothar Mor) comprise the Oakwood Arms Hotel. Topaz filling station and McDonalds DriveThru. Along the eastern boundary are a number of individual businesses including children's play centre, car sales/service and restaurant. The Atlantic Air Venture premises occupies a prominent corner site at the junction of An Bothar Mor and Bothar NaLuachra.

A planned approach shall be taken to the development of the remaining area of COM1. This shall avoid piecemeal development like that which exists along the eastern boundary. It is an objective to facilitate development/redevelopment proposal for appropriate commercial development in the context of:

-Maintaining the vitality and viability of Shannon town centre.

Achieving and attractive frontage onto Smithstown Road, An Bothar Mor and the eastern access road.

Ensuring the residential amenities of any future residential development on adjoining R1 lands are safeguarded.

5.2. **Natural Heritage Designations**

Lower River Shannon SAC 1.6km from the site.

The River Shannon and River Fergus Estuaries SPA 1.6km from the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1 A third party appeal has been lodged by Frank Ross Consulting Engineer on behalf of the Hickey Families.

- The appellants' property is located to the west of the site with it noted there is an existing dwelling to the east of the site and lands zoned for residential use

to the south. The planning history of the site is noted on which commercial development has previously been refused on site.

- The height, scale and proximity of the structure relative to adjoining residential properties would cause overlooking/loss of privacy, provides inadequate separation from existing development, would result in disturbance through noises/general disturbance associated with the proposed use and traffic associated and would cause depreciation of property values.
- Multiple uses are proposed and the fact that the end users and nature of these activities is unknown at this stage is unacceptable in the context of potential impact on residential amenities.
- The proposal is inadequate in terms details regarding waste generation, details of landscaping and boundary treatment, measures to protect adjoining amenities during the construction phase.
- The further information submitted is inadequate in terms of details of the level of traffic generated, details of car parking provided and landscaping, details of refuse storage, details regarding impact of public lighting in terms of overspill and impact on existing trees and hedgerow on site.
- The appellants do not concur with the Planning Authority's assessment of the proposal in the context of nature and principle of the use at this location, impact on adjoining residential amenities, overall visual impact and traffic impact.

6.2. Applicant Response

6.2.1 Response by Stephen Maughan, on behalf of the applicants, Currana Investments Ltd.

- The proposal is consistent with land use policy under the Local Area Plan and condition 3(a) deals with the specific nature of the future occupants.
- The design and scale of the proposal is acceptable in the context of the visual amenities of the area.

- Existing trees and hedgerows on site are to be retained and condition no. 4 requires a landscaping scheme.
- A Traffic Impact Assessment (TIA) submitted and information provided demonstrate the proposal would be acceptable in the context of traffic safety with a one way system/entrance exit approach proposed and adequate car parking provided on site.
- Enclosed bin storage is provided for each use and appropriate waste disposal will ensure no adverse impact on adjoining properties.
- In terms of planning history it is noted that when the applications in question were refused the site was not zoned for commercial use. Under the current LAP the site is zoned for commercial use.

6.3. Planning Authority Response

6.3.1 No response.

6.4. Observations

6.4.1 An observation has been submitted by Pat McAllen, Smithstown, Shannon, Co. Clare.

- The observer's property is the dwelling to the east of the site.
- The height, scale and the proximity of the development would result in overlooking and loss of privacy at the observer's property.
- The observer's property is located opposite the entrance to Smithstown Industrial Estate with existing traffic congestion issues. The proposal would generate additional traffic and exacerbate such congestion with serious traffic safety concerns.
- The proposal would generate noise and general disturbance impact adversely on residential amenity.
- The proposal would be visually overbearing and have an adverse impact on the visual amenities of the area.

7.0 Assessment

7.1. Having inspected the site and examined the associated documents, the following are the relevant issues in this appeal.

Principle of the proposed development/land use zoning

Design, scale, visual amenity

Adjoining amenities

Traffic/access

Appropriate Assessment.

7.2. Principle of the proposed development/land use zoning:

7.2.1 The relevant Development Plan is the Shannon Town and Environs Local Area Plan 2012-2018. The site is zoned Commercial with a stated objective noting that “the use of commercially zoned lands shall be taken to include the use of land for commercial and business uses, including retail, office, service industry, warehousing and the facilitation of enterprise/retail park/office park type uses, as appropriate. It is important to reserve these lands for possible commercial and/or business uses and redirect other uses where it is considered that such uses would be more appropriately sited within other land zoning categories”. The proposal is for 3 no. mixed commercial buildings (total floor area of 4,450sqm) comprising industrial and light industrial use. The zoning matrix under the LAP (Table 4) notes that both ‘Industrial General’ and ‘Industrial Light’ uses are ‘open for consideration under this zoning.

7.2.2 The appeal site is located in an area that is predominantly a commercial area with the Smithstown Industrial Estate located on the opposite side of the road. I would consider that the nature of uses proposed is acceptable in the context of land use zoning policy and that the principle of the proposed development is acceptable subject to an acceptable impact in terms of the visual amenities of the area, the

amenities of adjoining properties and traffic safety. These aspects of the proposal are to be assessed under the following sections of this report.

7.3 Design, scale, visual amenity:

7.3.1 The proposal provides for 3 no. mixed commercial buildings (total floor area of 4,450sqm) comprising industrial, light industrial. The approved proposal is a revised design due to further information. The units are contained in a single-structure with a flat roof and ridge height of 7.5m for the majority of the structure. The front elevation is broken up by three separate sections defining each unit consisting of a glazed section where the office accommodation of each unit is provided. The corner feature at north eastern corner of the structure is the highest part of the building with a ridge height of 10m having been reduced in height from 11.1m. The front and side elevations feature horizontal metal panels with such broken up on the front elevation by darker coloured vertical metal panels in the areas where the office accommodation of each unit is provided.

7.3.2 The appeal site is located in an area that is predominantly commercial in nature with a significant level of commercial development similar in nature and scale located on the opposite side of the public road. I would consider that the overall design and scale of the development proposed is not out of keeping with adjoining development at this location. I would consider the overall design and scale of the approved development is acceptable in the context of the visual amenities of the area. I would note that it is proposed to retain existing trees and hedgerows along the southern, eastern and western boundaries and that a condition was applied requiring a landscaping scheme for the site. I would consider that subject to the provision of such and a condition requiring agreement of external finishes (colour/texture) that the proposed development would have an acceptable visual impact at this location.

7.4 Adjoining amenities:

7.4.1 The appeal submission raises concerns regarding the impact of the proposal on the residential amenities of adjoining properties, through the scale and proximity of

structure on site and the general disturbance due to the nature of the uses proposed. The nearest dwellings to the appeal site are a single-storey dwelling adjoining the eastern boundary (the observer's property) and a single-storey dwelling adjoining the western boundary (appellants' property). The appellants and the observer note the proposal by virtue of design, scale and proximity would have a physically overbearing impact as well as result in a loss of privacy. In the case of the appellants property to the south west of the site, the scale of the approved structure is 7.5m in height and is located a reasonable distance from the boundary between the appeal site and the appellants' dwelling (approx. 14m from the boundary and a distance of 28m between the proposed structure and existing dwelling at their nearest points). In the case of the dwelling to the east the level of physical separation is higher with a car parking area located to the east of the proposed structure. The level of separation between the proposed structure and the eastern boundary is 41m with a distance of 51m between the proposed structure and the observer's dwelling at their nearest points. I am satisfied that the design, scale and layout of the proposed structure would be acceptable in the context of their physical impact and relationship with adjoining properties. In regards to overlooking I would note although there are windows at first floor level on the eastern elevation, the level of separation between the eastern elevation and the adjoining property to the east is high. In addition it is proposed to retain existing trees and hedgerow boundaries to the south, east and west.

7.4.2 The appeal submission and observation raises concern regarding the impact of the proposal on residential amenity through noise, traffic and general disturbance caused by the proposed use adjoining existing residential development. As noted above the proposed use is compatible with the zoning objective of the site and in keeping with established uses within the vicinity. I would consider provision of industrial/light industrial uses adjacent residential development is acceptable subject to a number of restrictions. I would first note that emission limit values for noise (EPA standards) should be applied by way of condition. I would also consider it appropriate that some restriction is placed on the operating hours of the proposed development (no 24 hours operation). I would also recommend a condition regarding appropriate cowlings of lighting provided on site. I would consider subject to such

restrictions that the proposed development would be satisfactory in the context of the amenities of adjoining properties. The appeal submission raises concerns in relation to the lack of details regarding the end users of the proposed development. I do not consider that this is a reason to preclude the proposal with it clear that the proposal is commercial in nature and providing for industrial/light industrial use. I am satisfied that subject to the conditions restricting noise, opening hours and lighting as well as a condition requiring approval of the end users prior to occupation by way of written agreement with the Planning Authority, the proposed development would be acceptable in the context of adjoining amenities.

7.4.3 There was a proposal for refuse storage area at the south western corner of the site but such was removed in response to further information. Each unit is to have an enclosed waste refuse storage area (one on the western elevation and two on the eastern elevation). I am satisfied that adequate provision is made for waste storage and such is far removed from adjoining properties as well as being fully enclosed). An appropriate condition requiring a Construction Management Plan is adequate to ensure no adverse impact during the construction phase.

7.5 Traffic/Access:

7.5.1 The proposal entails the provision of two vehicular entrances off the Smithstown Road, one an entrance only (adjacent the north western corner) and the other an exit only further east along the roadside boundary with a one way traffic system on site. The approved proposal provided for car parking for 90 cars and loading bays of HGVs on the rear elevation. The proposal provides car parking in excess of the standards required under Development Plan policy (89 spaces required under the Clare County Development Plan 2017-2023).

7.5.2 The vertical and horizontal alignment of the Smithstown Road is of a good standard with the site located within the 60kph speed limit zone. It is proposed to provide a 2m wide footpath along the entire road frontage and both entrances provide for at least the required 59m of visibility in each direction (measures 2.4m from the road edge)

under the Design Manual for Urban Roads and Streets (DMURS). A Transport Impact Assessment (TIA) was submitted with the application and such was updated in response to further information. The TIA concludes that traffic generation during the peak hours of operation will not be significant and can be accommodated by the proposed access arrangements on site. I would consider that having regard to the information submitted that the road network at this location has adequate capacity to cater for the proposed development and the traffic likely to be generated. The provision of a one-way traffic flow system and a separate entrance exit arrangement would be satisfactory to manage traffic on site. I am also satisfied that the design and layout of the proposed vehicular entrances meet the requirements of DMURS and that adequate separation is provided between the exit point and the junction serving the industrial estate to the north east of the site. I would consider that the proposed development would be satisfactory in the context of traffic safety and convenience.

7.6. Appropriate Assessment:

7.6.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, 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. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to pattern of development, the policies of the Shannon Local Area Plan 2012-2018, to the scale and nature of the activity proposed, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in

the vicinity, would be acceptable in terms of traffic safety and convenience, and would, therefore, be in accordance with 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 as amended by the further plans and particulars lodged with the application on the 04th July 2019 and the 31st July 2019, 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 interests of clarity.

2. The proposed development shall be amended as follows:

(a) Provision shall be made for bicycle parking on site.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of orderly development.

3. Prior to the occupation of any of the proposed units the details of the end user/occupier shall be agreed in writing with the Planning Authority.

Reason: In the interests of orderly development.

4. Details of materials, colours and textures of all external finishes to the proposed development shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interests of visual amenity.

5.

(a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling shall not exceed:-

i) An LAeqT value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive. The T value shall be one hour.

ii) An LAeqT value of 45 dB(A) at any other time. The T value shall be 15 minutes. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation R 1996 "Assessment of Noise with respect of Community Response" as amended by ISO Recommendations R 1996 1, 2 or 3 "Description and Measurement of Environmental Noise" as applicable.

Reason: To protect the [residential] amenities of property in the vicinity of the site.

6. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the canopy, on the forecourt building or anywhere within the curtilage of the site) unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

7. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

8. Comprehensive details of the proposed lighting to serve the development shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development. The lighting proposal shall include cowling to ensure no light overspill onto the adjoining residential property.

Reason: In the interest of public safety and visual amenity.

9. Water supply and drainage arrangements, including the disposal of uncontaminated surface water, shall comply with the requirements of the planning authority for such works and services and no surface shall discharge onto adjoining properties or the public road.

Reason: In the interest of public health and to ensure a proper standard of development.

10.

(a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained (southern, eastern and western boundary) shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of 2 metres from the trunk of the tree or the centre of the shrub, and to a distance of 2 metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.

(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No works shall be carried out within the area

enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

Reason: To protect trees and planting during the construction period in the interest of visual amenity.

11. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

12. 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 within three months of the date of this order 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.

Colin McBride
Planning Inspector

09th December 2019