



An
Bord
Pleanála

Inspector's Report

ABP-305762-19

Development	Construction of seventeen houses and all ancillary site works.
Location	Cuairt na hAbhann, Clarina Village, Co. Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	181039
Applicant(s)	Recurve Civic Construction Ltd.
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party V. Grant
Appellant(s)	Owen O'Sullivan
Observer(s)	None
Date of Site Inspection	29th January 2020
Inspector	Fergal O'Bric

1.0 Site Location and Description

- 1.1. The appeal site, Cuairt na hAbhann, is identified as an unfinished housing development and is part of a larger residential development, approximately 650 metres west of Clarina Village centre. The site is bound to the north by a one-off dwelling. To the west is an existing residential development, Cill na Cailli. To the east is an existing residential development, Aos Cluan. To the south is a residential development that is currently under construction. The appeal site comprises four residential units which are constructed to wall plate level, some roads and services. There are a pair of semi-detached houses at the start of the Cuirt na hAbhann cul-de-sac which are completed and inhabited, contiguous to, but outside of the red line application site boundary. The area is generally characterised by medium to low density housing.
- 1.2. The site has a stated area of 0.595 ha. It is rectangular in shape and site levels are consistent with those of the internal service road. The site boundaries include two metre walls to the east and west. There is a two metre temporary wooden fence to the south and hedging and trees to the north.

2.0 Proposed Development

- 2.1. It is proposed to construct one detached dwelling and eight pairs of semi-detached dwellings, giving a total of seventeen dwellings. This number includes the renovation and completion of the four existing dwellings which are constructed to wall-plate level but remain open to the elements for a number of years. Six number house types are proposed. House Types B, C, C2, D and E are semi-detached and have gross floor areas ranging from 109 to 168 square metres (sq. m.). House Type C1 is detached and has a gross floor area of 169 sq. m. All houses are of traditional design with a pitched roof and a mixture of brick and smooth plaster external finishes.
- 2.2. Access is proposed from an existing five and half metre wide internal access road which in turn is accessed off a local distributor road, serving a number of neighbouring residential developments. Each house has a driveway with off-street car parking provision for two cars. Seven additional visitor spaces are proposed with

access off the internal access road. A two-metre wide footpath is included along each side of the internal service road.

- 2.3. It is proposed that the development would connect to the existing main foul sewer and mains water supply.

Further Information was submitted to the Planning Authority on the 2nd September 2019. This addressed the following: The linear layout of the development; Open space provision; Details of boundary treatment; Design and layout and submission of a Design Statement; Landscaping; Submission of Sustainability statement and Social Infrastructure assessment; Details of footpaths, roads and car-parking; Surface water management proposals; Public lighting and Engineering Reports.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 26 number conditions. The relevant conditions are noted below: -

Condition 1: Clarified that permission was granted for the scheme as amended by clarification of further information.

Condition 2: required a bond/ cash deposit or other security.

Condition 3: Requires all trees and hedgerows to be protected during the construction phase except those whose removals has been agreed with the planning authority.

Condition 10: Relates to boundary treatments.

Conditions 16: Submission of a Construction Management Plan to be agreed in writing with the Planning Authority

Conditions 17: relates to waste management.

Conditions 20: Relates to surface water management.

Conditions 21: relates to public lighting

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The Planning Officer recommended that planning permission be granted following clarification on the matters raised within the further information request. The number of residential units nor the layout did not alter significantly within the further information response.

3.2.2. **Other Technical Reports**

- Operations and Maintenance Services-final report: No objection subject to conditions
- Environmental Services- final report: No objection subject to conditions
- Fire Department-final report: No objection subject to conditions.

3.3. **Prescribed Bodies**

- Irish Water: No objections, subject to conditions.
- Transport Infrastructure Ireland: No objection.
- Mid-Western National Roads Design Office: No objection.

3.4. **Third Party Observations**

One third party objection was received. The concerns raised are similar to those in the third-party appeal.

4.0 **Planning History**

On site:

Planning Authority reference number Reg. Ref. 07/1162: Permission was granted in 2007 for change of house types from nineteen terraced units to 16 semi-detached and three detached houses previously permitted as Courtyard 3, Clarina Village

under P99/2676 in 1999. on a larger site which incorporated the subject site. An Extension of Duration of Permission was granted in 2012 (Planning Authority Reg. Ref. 12/7016) and again in 2017 under Planning Authority Reg. Ref. 17/7036.

On adjacent lands:

Planning Authority reference number Reg. Ref. 99/2676, An Bord Pleanála reference number PL 13.129104: Permission was granted in November 2002 for the construction of 196 residential units, retail, commercial and community uses, a temporary wastewater treatment plant and foul pumping station to be developed on a phased basis over a ten year period.

Planning Authority reference number Reg. Ref. 15/221: Permission was granted in 2015 for the completion of construction of 48 retirement homes.

Planning Authority reference number Reg. Ref. 15/813: Permission was granted in 2015 for modifications and amendments to mixed use development originally permitted on site reference number Reg. Ref. 99/2676.

Planning Authority reference number Reg. Ref. 17/591: Permission was granted in 2017 for changes in surface of materials from paving to asphalt and from self-binding gravel to grass and shrub beds.

5.0 Policy and Context

5.1. Limerick County Development Plan, 2010-2016 (as extended)

The settlement strategy identifies the village of Clarina as Tier 5 - a small village with a range of infrastructural, social and community facilities. There are no specific land use zoning objectives set out for this settlement. Appendix 1 provides additional details regarding the village of Clarina. It states that the village had a population of 216 persons in 2006. It is stated that there is capacity to provide water and sewerage treatment within the timescale of the plan. Any development should be located north of the settlement core.

The relevant policies of the Limerick County Development Plan are set out below.

- HOU 3-1: Sustainable Residential Communities
- HOU 3-2: Urban Design
- HOU 3-3: Housing Mix
- SC5-2: Quality Provision of Public Open Space
- SC 5-8: Private Open Space Provision
- TM 2-1: Walking

5.2. **National Guidance**

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Area (2009).
- Urban Design Manual, A Best Practice (DOEHLG, 2009)
- Design Manual for Urban Roads and Streets DMURS (2013)

5.3. **Natural Heritage Designations**

There are no designated areas in the vicinity of the site.

5.4. **Environmental Impact Assessment - Preliminary Examination**

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A third-party appeal was received from the developer of a neighbouring residential development. The issues raised are summarised below.

- That Planning Authority Reg. Ref. 17/7036 is not valid as it was based on a permission that had expired under Planning Authority Reg. Ref. 07/1162.

- That new drainage lines were laid in 2017 in an entirely new location from previously existed and the applicants have failed to demonstrate that they have a right of way over the newly installed drainage line.

6.2. Applicants Response

The applicants response is outlined below:

- The concerns raised are invalid as the appeal has not been lodged by the party who made the original third-party submission to the Planning Authority.
- Matters raised within the appeal are not of legitimate planning concern.
- The appeal should be dismissed under the provisions of Section 138 of the Planning and Development Act 2000 (as amended) as it is without foundation or substance and would cause undue delay in re-commencing the development.
- The current application pertains to an entirely stand-alone permission and is not in any way dependent on previous permissions on the appeal site.
- The issue of access to services is a civil matter and reference is made to the provisions of Section 34 (13) of the Planning and Development Act 2000 (as amended) whereby persons shall not be entitled solely by reason of a permission under this section to carry out any development.
- Legal documentation submitted outlining the position of their client who is a director of a number of related companies and who purchased the appeal site in 2007. It is stated that this purchase included a deed of mutual easements which it is stated entitles them to a right of access to services within the lands.

6.3. Planning Authority Response

None.

7.0 Assessment

- 7.1. The main concerns raised in this appeal relate to the grounds of appeal. Appropriate Assessment requirements are also considered. I am satisfied that no other

substantial planning issues arise. The main issues can be dealt with under the following headings:

- Legal Issues
- Servicing of site
- Appropriate Assessment

7.2. **Legal Issues**

7.2.1. The first concern raised in the appeal relates to the validity of the application/appeal on this site given it is based on a historical grant of planning permission that has expired.

7.2.2. The applicants have made reference to the various planning histories pertaining to the appeal site and the wider residential development within their public notices. However, I am satisfied that the current proposals should be assessed as a stand-alone development. I note that no submissions were received from any of the neighbouring residents. I am satisfied that the current proposals will allow for the completion of this un-finished housing development, will be consistent with the pattern of residential development in this vicinity and would therefore accord with the principles of proper planning and sustainable development.

7.3. **Access to Services**

7.3.1. It is stated by the appellant that his company laid new services in 2017 at a new location and remote from the line of the old services. The applicants have submitted legal documentation where it is stated that the applicants purchased the appeal site in 2007, the documentation included a deed of easements (included as Appendix 2 within the further information response to the planning authority) which entitles them to access to any services.

7.3.2. A condition was attached to the final grant of permission that final surface water management details be submitted for the written agreement of the Planning Authority including details of on-site attenuation. Neither the Area Engineer nor Irish Water outlined objections to the servicing proposals. The Development Plan states that there is capacity available within the services.

7.3.3. In response, the applicant has stated that all works would be carried out on lands within their ownership and that a full topographical survey was carried out and all services are correctly shown on the drawings submitted. Section 5.13 of the Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about rights over land and that these are ultimately matters for resolution in the Courts. Section 34(13) of the Planning and Development Act 2000 (as amended) states: A person shall not be entitled solely by reason of a permission under this section to carry out any development. I am satisfied that the provisions outlined above give the Board sufficient comfort to permit the completion of this residential development.

7.4. ***Appropriate Assessment***

7.4.1. Having regard to the nature and scale of the proposed development within a serviced urban area and the distance from 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 that permission be granted subject to conditions.

9.0 **Reasons and Considerations**

9.1.1. Having regard to the location of the site within the 'existing built up area' of Clarina Village on an infill site that is included on the register of unfinished housing estates, the provisions of the Limerick County Development Plan, 2010-2016 (as extended), the existing pattern of development in the area, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the amenities of the area. The proposed development 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 as amended by the further plans and particulars submitted on the 2nd day of September 2019 by way of further information, 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. All trees and hedgerows within and on the northern boundaries of the site shall be retained and maintained, with the exception of the following:

Specific trees, the removal of which is authorised in writing by the planning authority to facilitate the development.

Retained trees and hedgerows shall be protected from damage during construction works. Within a period of six months following the substantial occupation of the proposed development, any planting which is damaged or dies shall be replaced with others of similar size and species, together with replacement planting required under paragraph (b) of this condition.

Reason: In the interest of visual and residential amenity.

3. Prior to commencement of development the applicant shall submit and agree in writing with the Planning Authority details of the physical boundary treatment along all boundaries of the site.

Reason: In the interest of visual and residential amenity.

4. The site shall be landscaped in accordance with the landscaping scheme submitted to the Planning Authority on the 2nd September 2019.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

5. The internal road network serving the proposed development, including the turning area, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

6. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of method for removing rock, intended construction practice for the development, including noise management measures and off-site disposal of construction / demolition waste.

Reason: In the interests of public safety and residential amenity.

7. Proposals for a house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility

8. Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

9. The applicant shall enter into water and waste-water connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

10. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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 amenities of property in the vicinity.

11. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

12. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of amenity and public safety.

13. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

14. Prior to the commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads footpaths, watermains, drains open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

15 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

Fergal O Bric
Planning Inspector

6th February 2020