



Development	Planning permission for retention of alterations to elevations of apartment and creche block previously granted planning permission under planning reference number 18/741.		
Location	Ballyhugh, Gort, County Galway.		
Planning Authority Ref.	2260571		
Applicant(s)	Newmar Developments.		
Type of Application	Permission.	PA Decision	Refuse Permission.
Type of Appeal	First Party	Appellant	Newmar Developments.
Observer(s)	None		
Date of Site Inspection	11/04/23	Inspector	Fergal Ó Bric

1.0 Site Location and Description.

The appeal site is located in the urban townland of Ballyhugh, which is located within the designated settlement boundary of Gort and accessed off the Tubber Road, south of the town centre. The appeal site is part of the overall Gort na Rí development, a residential development comprising single, two-storey detached, semi-detached and terraced dwellings as well as a part two/three-storey block comprising apartments and a creche facility, which is the subject of the current appeal. Site levels within the appeal site rise towards the public road (Tubber

Road) from the rear (east) of the site. The appeal site comprises a mixed use building, which reads as two storey from the public road and is three storey to the rear as allowed for by the change in ground levels within the site. Immediately south of the building is a surface car park area and an area of public open space and further south of the appeal site are residential units within the Gort na Rí development, to the west and on the opposite side of the Tubber Road is Gort National School, to the east is the Cannahowna River channel which in turn flows into the Gort River further north of the appeal site, and to the north is an undeveloped residentially zoned site.

1.1 The mixed use three storey building, the subject of this appeal is located to the north within the overall Gort na Rí development and is served by an internal access road, footpaths and streetlighting. The creche facility is located at the lower ground floor and basement levels to the rear of the building and underneath the apartment units. There is shared surface car parking (between the creche and apartments) immediately east and south of the crèche facility and a drop off area to the west of the building, directly accessed off the internal service road. There is also a fenced off and dedicated play area located to the rear of the building immediately adjacent to the creche facility. There is a hedgerow boundary located immediately east of the car park on the opposite side of which is the Cannahowna river channel.

2.0 Proposed development.

Retention planning permission is sought for alterations to the elevations of an apartment and creche building that was permitted by Galway County Council under planning reference number 18/741.

2.1 The Board referred the planning appeal to the National Parks and Wildlife Section of the Department of Culture, Heritage and the Gaeltacht, An Taisce and to the Arts Council for comment. No responses were received from any of these prescribed bodies.

3.0 Planning Authority's Decision:

The Planning Authority refused planning permission for retention of alterations to the building for two reasons as follows:

- 1) Based on the information received in relation to the mitigation measures required for permitted development on site, and the alterations that have been made to the existing structure on site without the benefit of planning permission, the Planning authority is not satisfied that likely significant effects of the development on European sites can be excluded. Therefore, it is considered that the development, either alone or in combination with other plans and projects, has the potential to adversely affect the integrity of the Coole Garryland SAC and the Coole Garryland SPA, in view of their conservation objectives and would materially contravene policy objectives NHB1, NHB2, and NHB3 of the Galway County Development Plan 2022-28 and would be contrary to the proper planning and sustainable development of the area.
- 2) Having regard to the alterations that have been made to the existing structure on site, including alterations to the building height, floor area, dimensions, unit typologies, internal layouts and creche facility, which represent a significant departure from the development permitted under planning reference 18/741, the Planning Authority considers that the development would, if permitted and, in the absence of demonstrable contrary evidence, perpetuate and intensify existing unauthorised development on site. Accordingly, to grant the development as proposed would be contrary to the proper planning and sustainable development of the area.

4.0 Planning History.

Planning Authority reference 08/2336, in 2009, Reddington Developments were granted planning permission for 132 residential units comprising detached, semi-detached and terraced housing units and apartments, two shop units and a creche facility. This planning permission expired on the 17th day of May 2014.

Planning Authority reference 14/502, in 2014, planning permission was granted an extension of duration of planning permission for the development of 132 residential

units comprising detached, semi-detached and terraced housing units and apartments, two shop units and a creche facility. The permission was extended until the 1st day of July 2019.

Planning Authority reference 18/741, in 2018, Newmar Developments were granted planning permission to alter the previously permitted apartment/creche/commercial building and for the omission of the commercial units and replacement with seven ground floor apartments and four first floor apartments. The permission was extended until the 6th day of July 2019.

Planning Authority reference 19/738, in 2009, Newmar Developments were granted an extension of duration of planning permission for the development of 132 residential units comprising detached, semi-detached and terraced housing units and apartments and creche facility previously permitted on site under reference numbers 14/502 and 18/741. The permission was extended until the 31st day of December 2021.

5.0. Local Planning Policy

5.1 Galway County Development Plan 2022 -2028

The Galway County Development Plan 2022 -2028 was adopted by the Planning Authority on 9th May 2022 and came into effect on the 20th day of June 2022. Chapters 3, 11 and 15 of the plan refer.

Chapter 3: Placemaking, Regeneration and Urban Living.

Strategic Aims include:

To encourage a mix of house types and sizes, enable homeowners to modify their properties to facilitate modern living as their needs change.

Section 3.5.8-Design Quality

Attractive and liveable places need to also achieve good design standards. The quality of design will inform the perception of a place. To achieve good design, it must be applied in a holistic manner. It must relate to buildings, streets and public

spaces as well as our homes and workplaces. Well-designed towns and villages result in increased economic activity as people spend time in places that are pleasant.

Section 11.8 Childcare facilities.

Relevant policies and objectives include:

CF 1 Childcare Facilities

Encourage and support the sustainable provision of childcare facilities in appropriate locations and seek their provision concurrent with development, having regard to the distribution of the residential populations and population targets for the area and in accordance with the Guidelines on Childcare Facilities: Guidelines for Planning Authorities (DoEHLG, 2001), the Childcare (Pre-School Services) Regulations 2006 and any other relevant statutory guidelines which may issue during the period of this Plan.

CF 3 Crèche Facilities

Require where appropriate the provision of crèche facilities in mixed use/residential developments in accordance with the ministerial guidelines for Planning Authorities on Childcare Facilities published in 2001. In general, childcare facilities outside of established settlements shall only be permitted adjacent to or in close proximity to existing educational or social facilities.

Chapter 10: Natural Heritage, Biodiversity and Green/Blue Infrastructure.

NHB 1 Natural Heritage and Biodiversity of Designated Sites, Habitats and Species:

To protect and where possible enhance the natural heritage sites designated under EU Legislation and National Legislation (Habitats Directive, Birds Directive, European Communities (Birds and Natural Habitats) Regulations 2011 and Wildlife Acts) and extend to any additions or alterations to sites that may occur during the lifetime of this plan.

Protect and, where possible, enhance the plant and animal species and their habitats that have been identified under European legislation (Habitats and Birds Directive) and protected under national Legislation (European Communities (Birds and Natural Habitats) Regulations 2011 (SI 477 of 2011), Wildlife Acts 1976-2010 and the Flora Protection Order (SI 94 of 1999).

Support the protection, conservation and enhancement of natural heritage and biodiversity, including the protection of the integrity of European sites, that form part of the Natura 2000 network, the protection of Natural Heritage Areas, proposed Natural Heritage Areas, Ramsar Sites, Nature Reserves, Wild Fowl Sanctuaries (and other designated sites including any future designations) and the promotion of the development of a green/ ecological network.

NHB 2 European Sites and Appropriate Assessment:

To implement Article 6 of the Habitats Directive and to ensure that Appropriate Assessment is carried out in relation to works, plans and projects likely to impact on European sites (SACs and SPAs), whether directly or indirectly or in combination with any other plan(s) or project(s). All assessments must be in compliance with the European Communities (Birds and Natural Habitats) Regulations 2011. All such projects and plans will also be required to comply with statutory Environmental Impact Assessment requirements where relevant.

NHB 3 Protection of European Sites:

No plans, programmes, or projects etc. giving rise to significant cumulative, direct, indirect or secondary impacts on European sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall be permitted on the basis of this Plan (either individually or in combination with other plans, programmes, etc. or projects).

Section 15.2.2-Applicable to all development

DM Standard 1: Qualitative Assessment-Design Quality, Guidelines and Statements

Universal design is the design of an environment so that it can be accessed, understood and used to the greatest extent possible by all people regardless of their age, size, ability or disability. Circulation within housing layouts, including access to individual buildings, open spaces and facilities, should have regard to the varying needs of occupants over their lifetimes, including needs associated with impaired mobility. Innovative dwelling design shall be encouraged in order to facilitate the potential future provision of adaptable and accessible accommodation.

Section 15.10 Community Development and Social Infrastructure

The Council shall seek to ensure that community facilities are provided in tandem with housing developments as well as ensuring there is an adequate proximity to all essential services such as shops.

5.2 Natural Heritage Designations

The closest designated European Sites are the Coole Garryland SAC (site code 000252) and the Coole Garryland SPA (site code 004107) both of which are located approximately 1.47 kilometres north-west of the appeal site boundary.

6.0 The Appeal

6.1 First Party Appeal.

- The Planning Authority refused planning permission for retention of alterations to elevations on the grounds that mitigation measures included as part of an NIS submitted in relation to planning reference 18/741 were not carried out.
- If the Planning Authority has issues with lack of compliance with mitigation measures, they should have issued planning enforcement proceedings against the developer.

- The Planning Authority raised no issues in relation to mitigation measures up until now.
- No submissions from the National Parks and Wildlife Service or Fisheries Ireland have been made to support the stance of the Planning Authority in this instance.
- Onsite meetings with Council Engineers have been had and Bank monitors and neither raised the issue of non-compliance with mitigation measures.
- The development has been completed to a high standard and the trees along the riverside edge have not been disturbed.
- The Planning Authority are raising concerns relating to issues where no evidence to support their concerns has been presented.
- The applicants do not agree that the alterations represent a significant departure from the previously permitted plans under planning reference 18/741.
- The pitch of the roof of the building has been altered and the height lowered by 1.6 metres from that originally permitted.
- The length of the building has been increased by 0.23 metres due to a revised method of block laying and the width of the creche facility has been reduced by 0.065 metres in order to comply with the standards set out in Part A of the Building Regulations, and in particular, disproportionate collapse.
- The open plan apartments originally permitted are now served by a corridor in order to satisfy the standards set out within Part B of the Building Regulations, in relation to fire safety.
- Entrance lobbies to the apartments were enlarged in order to facilitate improved disabled access.
- Internal alterations would potentially be exempt from planning.

- The creche alterations were made in order to adhere to standards set out by Túsla, in terms of sanitary provision and numbers of toilets to serve staff and children.
- No change of use has occurred on site, childcare and residential uses remain within the building and within the overall Gort na Rí development.
- The finished floor levels have been raised by 10 millimetres approximately from those originally permitted.
- There is no unauthorised development on site and no enforcement proceedings have been issued by the Planning Authority in relation to this development.

6.2 P.A. Response

- None.

7.0 EIA Screening - Having regard to the relatively minor nature of the alterations to the apartment/creche building and its location removed from any sensitive locations or features on zoned serviced lands, there is no real likelihood of significant adverse effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 AA Screening - The subject site is located approximately 1.47 kilometres south east of the Coole Garryland SAC (site code 000252) and 1.47 kilometres south-east of the Coole Garryland SPA (site code 004107). Having regard to the scale and nature of the alterations to the apartment/creche building sought to be retained and to the location removed from any European Sites, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site. This issue is discussed in greater detail within Section 2.2 of this report below.

2.0 Assessment

2.1. Introduction

2.1.1. The key issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Principle of development.
- Other Matters

2.2. Principle of Development

2.2.1. The first reason for refusal as set out by the Planning Authority related to them not being satisfied that likely significant effects arising from the alterations to the apartment/creche building on European sites cannot be excluded and, therefore, that natural heritage policy objectives NHB1-3 would be materially contravened.

2.2.2. The applicants are seeking planning permission for the retention of alterations to elevations of a mixed use apartment/creche building with a total floor area of 1,263 square metres and a maximum ridge height of 12.21 metres. From the information submitted as part of the planning documentation and from the planning history pertaining to the appeal site, the length of the building has been increased by 230 millimetres. It is stated that this alteration arose as a result of the two gable walls being constructed by laying blocks on the flat for structural reasons, to provide greater structural stability, rather than on their sides. The width of the building is as originally permitted. It is stated that a protected corridor was added to the ground floor apartments at construction stage in order to comply with Part B of the Building Regulations, in relation to fire safety. The entrance lobbies to the apartments were altered in order to improve disabled access.

2.2.3. The width of the lower ground floor area which currently provides for part of the creche facility has been reduced by 65 millimetres due to the construction techniques used at the time. It is stated that this alteration was to provide for a more robust structure in compliance with Part A of the Building Regulations, in particular the matter of disproportionate collapse. Túsla requirements have also been met in relation to WC provision and numbers of staff and children catered for within the creche facility. It is stated that a number of the changes (including removal of open

plan layouts) from within the apartments and creche facility are of an internal nature, which the applicants are of the opinion would be exempt from planning. I would concur with the applicants having regard to the provisions as set out under Section 4 (1) (h) of the Planning and Development Act 2000 (as amended), whereby:

Alterations of any structure, being works which only affect the interior of the structure or which do not materially affect the external appearance of the structure so as to the appearance inconsistent with the character of the structure or of neighbouring structures. are not so significant as to materially alter the external appearance of the structure are exempt from the need to seek planning permission.

2.2.4. The impact of the alterations has resulted in a longer building, by 230 millimetres as viewed from the public road, the width of the building has been reduced by 65 millimetres from that permitted. The roof pitch is shallower from that permitted owing to the use of prefabricated roof trusses and the ridge height has been reduced by 1,6 metres approximately from that originally permitted. Two rooflights have been added to the rear roof line and the distribution of windows and doors at ground floor level on the rear elevation has been more evenly proportioned. The finished floor levels are 10 millimetres above those originally permitted. The applicants have clearly illustrated these alterations within the planning documentation submitted, clearly illustrating and labelling the permitted drawings and the as constructed drawings. No change of use has occurred within the building nor has the servicing of the building altered, whereby the outfall is to the public foul and surface water sewers.

2.2.5. Overall, I consider that the alterations are of a relatively modest nature and the applicants have set out their justification for the alterations based on construction technique grounds, on Túsła requirements and on the basis of compliance with the Building and Fire Regulation standards.

2.2.6. In conclusion, the Planning Authority have not clearly set out what specifically the applicants have failed to implement in terms of the control/mitigation measures as included within their Natura Impact Statement, submitted under planning reference 18/741. Neither am I aware that the Planning Authority has instigated any planning enforcement proceedings against the developer in this regard or in regard to any other matter in relation to the development of this mixed use building. The applicants have set out that the alterations to the elevations are not so significant as to adversely impact upon the Coole Garryland SAC and SPA which are both located

approximately 1.47 kilometres north-west of the appeal site and on the opposite side of the M18. By virtue of the separation distance, the fact that the appeal site is fully serviced and the services have been developed in accordance with the 18/741 planning permission, I consider that no European site would be adversely impacted by the alterations and that the rationale used by the applicants to be both reasonable and proportionate. I also consider that specific policy objectives NHB1-3 inclusive which relate to the protection and enhancement of European sites are not contravened by virtue of the alterations to the building as completed by the developers, and that the development, as constructed, accords with the proper planning and sustainable development of the area.

2.3. Other Matters

- 2.3.1. The second refusal reason as set out by the Planning Authority sets out that the alterations to the building represent a significant departure from the development permitted under planning reference 18/741 and that to permit the development would perpetuate and intensify existing unauthorised development on the site. The applicants acknowledge that the building as constructed represents a departure from the building originally permitted. The extent of the departure is clearly set out within the planning documentation submitted and within Sections 2.2.3 and 2.2.4 in the report above. The alterations are significant enough to require a regularisation of the planning permission. I consider that the departure would not constitute a significant departure and their rationale has been clearly explained in terms of construction techniques, to achieve compliance with Túsła requirements for creche facilities and in order to ensure compliance with Building and Fire regulation standards.
- 2.3.2. The issue of perpetuating and intensifying existing unauthorised development on site is unclear. I note the Planners report outlines a detailed planning history pertaining to the overall Gort na Rí development. However, I can find no reference to any unauthorised development or enforcement proceedings in relation to development on this site. The applicants state that they are not aware of any unauthorised development on the site either. In the absence of evidence to the contrary, it would appear that the development has been completed in accordance with the permitted plans, except for the relatively modest alterations which the current application is seeking to regularise.

2.3.3. In conclusion, I am satisfied, based on the information submitted by the applicants and the Planning Authority that there is no evidence of unauthorised development having been carried out on this site, except for the alterations to the mixed use apartment and creche building which the applicants are seeking to regularise under the current proposals, Therefore, I consider that the second reason for refusal as set out by the Planning Authority should not be upheld.

3.0 Conclusion

3.1 In conclusion, I consider the current proposals would not be contrary to the provisions of specific policy objectives NHB 1-3 relating to the protection and enhancement of European sites. I note that the building in question is connected to the public foul sewer and public surface water sewer which are in charge of Irish Water. I am not aware that the Planning Authority have not initiated any enforcement proceedings against the developer in relation to failure to comply with any of the conditions of the planning reference number 18/741. No issues have been raised by any of the prescribed bodies in relation to adverse impacts arising with any of the European sites. On this basis, I am satisfied that the development has been developed in accordance with the proper planning and sustainable development of the area.

4.0 Recommendation

I recommend that planning permission for retention of alterations to the apartment and creche building as originally permitted under planning reference 18/741 be granted.

5.0 Reasons and Considerations:

Having regard to the relatively minor nature and scale of the alterations to the apartment and creche building which is located within the settlement boundary of Gort on zoned serviced lands, I am satisfied that the alterations to the building which is connected to the public foul and surface water sewer network and the separation distance from the nearest European sites, which are located on the opposite (western) site of the M18 Motorway, that no adverse impacts would arise upon the qualifying interests of these or any other European sites as a result of the alterations having been made. Notwithstanding the applicants made alterations to the building, I

consider the alterations to be of a relatively minor nature and carried out in order to achieve compliance with Building and Fire Regulation standards and Túsla regulations and, therefore, on balance, I consider that the alterations are in accordance with the proper planning and sustainable development of the area.

6.0 Conditions

1. The development shall be retained in accordance with the plans and particulars received by the planning authority on the 8th day of June 2022 and with the plans and particulars received by An Bord Pleanála on the 10th day of August 2022 except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2 The planning conditions as set out under planning reference 18/741 shall be complied with in full.

Reason: In the interest of proper planning and sustainable development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Fergal Ó Bric

Planning Inspectorate

21st day of December 2023