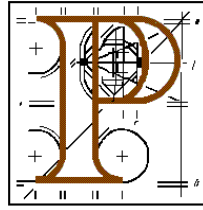


## An Bord Pleanála



### Inspector's Report

**Reference:** PL92.245463

**P.A. Reference:** 15/600511

**Title:** Building comprising staff flat, office storage, workshop, solar panel, internal access road, wastewater facility with percolation area and landscaping.

**Location:** Ballytarsna Castle, Ballytarsna, Cashel, Co. Tipperary

**Applicant:** Mr. Herbert Williamson

**Appellants:** Same

**Observers:** None

**PA:** Tipperary County Council

**Type of Appeal:** First party against refusal

**Decision:** Permission refused

**Date of Site Visit:** 17<sup>th</sup> December 2015

**Inspector:** Philip Davis

## 1. Introduction

This appeal is by the owner of a restored medieval tower house against the decision of the planning authority to refuse permission for a building within the curtilage incorporating a staff flat with storage and a solar panel to the front of the site on lands north of Cashel, Co. Tipperary. It was refused by the planning authority for reasons relating to policy on protected structures, policy on housing, and public health.

## 2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

### **Ballytarsna Castle, County Tipperary**

Aughnagomaun and Ballytarsna townlands are situated in the rolling north Tipperary countryside approximately equidistant between Thurles and Cashel. The nearest settlements are Horse and Jockey, some 4.5 km to the north-east, and Holycross, about 6-km north-west. It is just over 1-km west of the M8 Dublin-Cork Road, and a slightly lesser distance from the former Dublin-Cork road, the R639. It is an area characterised by medium sized fields in pasture, bounded by trimmed hedges, and served by two third class roads, one of which links the R639 and the R659 Cashel to Thurles Road, which is about 3-km to the west. The area is sparsely populated, with a scattering of dwellings, including a small cluster at a crossroads (Aughnagomaun Crossroads) where the two third class roads meet. There are a number of medieval sites in the vicinity, including a tower house, moated site and church/graveyard, indicating that it may once have been an important local centre – the local road seems to have been the main road north from Cashel in medieval times, predating the R639 turnpike. The area is over the 100 metre contour, with a distinct local highpoint of 225 metres at Killough Hill, some 2-km north of the townlands.

The landholding subject to appeal is dominated by a fully restored 15<sup>th</sup> Century tower house (Ballytarsna Castle). The castle is newly rendered in a honey coloured finish, and the site is recently landscaped, although some parts, including the front wall and railings are unfinished. There is a restored/reconstructed bawn on the southern side of the towerhouse and a small stone storage building, including what might be termed a mini-bawn for waste bins on the western side of the storage building. There are mobile homes on the site – apparently occupied by a caretaker, in addition to a small single storey structure separate from the main tower house and a timber shed, all to the rear (west) of the tower house.

### **The site and environs**

The appeal site, with a site area give as 0.01 hectares, is an irregular shaped flat area of land located on western side of the more minor of the two country roads, about 300 metres south of Aughnagomaun crossroads, within the curtilage, but not including Ballytarsna Castle. The land is flat and grassed with some newly planted specimen trees.

The overall castle site is bounded by a mix of low walls and railings, post and rail fences, and ditches. It is surrounded on all sides by open agricultural land, rising gently in levels to the north. The adjoining road is narrow, twisty, and generally substandard in width and alignment.

### **3. Proposal**

The proposed development is described on the site notice as follows:

*A single storey ancillary use building of 140 m<sup>2</sup> comprising: a one bedroom staff flat 65 m<sup>2</sup>, office 15 m<sup>2</sup>, storage 30 m<sup>2</sup>. The development will also be provided with 4 m<sup>2</sup> of roof mounted solar panels, an internal access road connected to the existing driveway, a waste water treatment facility with a percolation area, landscaping as well as all other site services.*

The tower house is a Recorded Monument (TS 053-006) and a protected structure.

### **4. Technical Reports and other planning file correspondence**

#### **Planning application**

The planning application, with supporting documentation relating to the history and background of the proposal and a site suitability assessment for a wastewater treatment system along with plans and specifications was submitted to the planning authority on the 23<sup>rd</sup> June 2015.

#### **Internal and External reports and correspondence.**

**Department of Arts, Heritage and the Gaeltacht:** It is noted that the Department recommended refusal in relation to two previous planning applications on the site, and recommends that any new application is premature pending the outstanding issues which have not been addressed in a current appeal (this appeal has subsequently been decided by the Board in favour of the applicant). It is noted that the proposed development makes no reference to previous archaeological assessments of the site which indicate possible features in this part of the site. It is recommended that permission be refused.

A '**Habitats Directive Assessment Screening Report**' on file noted that the nearest Natura 2000 site is the Lower River Suir, less than 5 km from the site. It concluded that there is no potential for significant effects, therefore appropriate assessment is not required.

**Tipperary CC Planners Report:** The planning history of the site is noted (although not the most recent appeal on the site). The objection by the DoAHG is noted. The planner's assessment stated that it is considered that the requirement for a full time on-site caretaker cannot be justified – the proposal is considered to be a self-contained, detached single storey dwelling with its own treatment system. A number of issues are raised with regard to what is stated to the incompleteness of the site suitability assessment. A refusal for three reasons is recommended.

## 5. Decision

The planning authority decided to refuse permission, for three reasons I would paraphrase as follows:

1. *It is considered that the building is not justified and will have a significant negative impact on the character and setting of Ballytarsna Castle and so would be contrary to Policies AEH 11 (Protected Structures) and AEH 13 (archaeology) in the South Tipperary County Development Plan 2009.*
2. *It is considered that it is contrary to Policy SS5 (individual houses in the open countryside).*
3. *It is considered that the site suitability assessment is incomplete and so it could give rise to a health hazard.*

## 6. Planning Context

### Planning permissions – appeal site

In September 2015 the Board, on appeal, overturned the decision of the planning authority (**15/600113**) to refuse permission for a single storey storage building with roof mounted solar panels next to the castle (**PL92.244887**). This was subject to conditions, including one that requires a render in smooth plaster finish be agreed with the planning authority within 2 months of the date of the order and implemented within 3 months after that.

In March 2010 the planning authority decided to grant an extension of duration for the works in 99/247, including window installation, repointing externally and rebuilding of both bartizans to tower house and the construction of a utility building and adjacent wall (**04/1157**).

In 2014 the planning authority issued a split decision (**13/328**), granting permission for the retention of:

*An extension to the existing utility building and an additional adjoining section of the bawn wall and the retention of an ancillary use structure west of the tower used as a workshop/garden store., and external rendering in lime of the main tower (previously granted) in addition to associated works, and:*

And refusing:

*The site entrance gates and the road boundary fencing, a single storey ancillary use building to the south of the tower used for storage with enclosing walls and approximately 12 m.sq. of roof mounted solar panels and continued residential use (temporary) of a mobile home for site staff.*

Condition 3 of this decision set a requirement for the preparation of a comprehensive Development Conservation & Archaeological Strategy for the overall conservation and restoration of Ballytarsna Castle.

In a recent reference case **RL3343** the Board decided (18<sup>th</sup> September 2015) that the installation of a temporary mobile home for an employee during construction works at the Castle **is** development and is not exempted development.

The planning authority granted permission in 1999 for the restoration and reroofing of the tower house, construction of utility area adjacent, access roadway and entrance, and provision of a septic tank system (**99/247**).

#### Planning permissions – adjoining areas

None relevant on file – the appellant in the appeal refers to a number of other applications for works to tower houses around the country.

#### Development Plan

The site is in open countryside without a specific zoning designation. The tower house is a Recorded Monument and a Protected Structure. Policies AEH 11 and AEH 13 in the Development Plan relate to protected structures and archaeology. Policy on rural settlement (SS5) also applies.

Relevant extracts from the 2009-2015 South Tipperary Development Plan are attached in the appendix to this report.

## **7. Grounds of Appeal**

A detailed appeal submitted (before the Board decision in PL92.244887), which includes a development conservation and archaeology strategy, sets out a series of arguments I would summarise as follows:

- It is argued that the Castle is a residential dwelling and the caretakers lodge forms an ancillary element to the dwelling.
- The history of the site is outlined, with particular reference to the high quality restoration work carried out.
- It is argued in some detail that the proposed development has been designed to harmonise with the overall building, and it is within a landscaped setting. It is noted that the design is similar to that constructed by the OPW at Barryscourt Tower House.
- It is stated that the proposed development is fully in accordance with the detailed Conservation, Development and Archaeology Strategy submitted in compliance with condition no. 3 under application ref **13/328** (attached with the appeal).
- It is argued (with evidence attached) that there is a specific crime issue in the area and as such a caretakers accommodation is justified – the applicant has no issue with a condition ensuring that the unit can be restricted to an employee of the owner only.
- It is submitted that the planning authority reason for refusal relating to public health is petty – a report outlining further details on the site assessment is attached. This argues that the site is suitable in terms of size and geology.
- It is indicated that previous archaeological surveys found no evidence of medieval buildings on the site. It is argued that an archaeological monitoring condition would be normal for a development such as this.

## **8. Planning Authority's Comments**

The planning authority states that they are satisfied that while elements of the unauthorised development on site have been regularised, these do not alter the planning authorities view on the case. It is requested that the Board uphold its decision.

## **9. Department of Arts, Heritage and the Gaeltacht**

It is stated that the below comments are submitted in the light of the most recent Board decision relating to the site (the comments on the planning file were submitted prior to this decision).

- It is submitted that the location to the south-east of, and on the direct approach to, the Recorded Monument will have a significant negative visual impact upon the setting.
- It is argued that a building of this size and scale cannot be considered 'minor' in the context.
- It is noted that some previous works were carried out without permission or the relevant notifications under the National Monuments Acts, and without archaeological supervision and the quality of some of the works to the bawn are questioned.
- It is noted that while the applicant has invested in restoring the house, it has been subject to grants from the Heritage Council and Tipperary County Council.
- It is noted that the Barryscourt building cited as justification is not a new building, but is in fact a restored 19<sup>th</sup> Century stables.
- The statement in the appeal that the National Monuments Service did not engage with the submitted archaeological strategy is disputed – correspondence to this end is attached.
- It is disputed that the 'normal' approach to such a scheme is for an archaeological monitoring survey.
- The Department '*strongly recommends that, given the negative visual impact of the proposed development on a Recorded Monument, and the possible impact on subsurface archaeological remains associated with the Tower House at Ballytarsna, and the cumulative nature of development on the site to date, that An Bord Pleanála uphold the Planning Authority's decision to refuse permission in this instance*'.

## 10. Appellants response

- With regard to the claimed 'cumulative negative visual impact', it is claimed that all works on the site now have the benefit of planning permission and have been carried out to a high standard.
- A series of photographs are attached with visualisations to support a detailed argument that the proposed development would not interfere with views towards the Tower House and are an appropriate and modest scale.
- It is suggested that the attic level could be omitted by condition if the Board considers the structure too high.
- It is argued that the DoAHG is wrong to suggest that the quality of work carried out is not of the highest quality and in compliance with all planning requirements.
- It is noted that the design is based on the outbuildings at Barryscourt. A number of other similar examples are quoted in an attached letter from Mr. Stephen Fallon, Conservation Architect –

this letter argues that the proposed development is consistent with good practice and other such outbuildings around tower houses (examples provided).

## 11. Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- **Principle of development**
  - Conservation and planning history
  - Housing policy
- **Visual impact and setting**
- **Archaeology**
- **Public health**
- **Appropriate Assessment and EIA**
- **Other issues**

### **Principle of Development**

#### Conservation and planning history

The proposed development is within the curtilage of a Recorded Monument. Such works are addressed in principle in the Architectural Heritage Protection Guidelines for Planning Authorities 2011. Development Plan Policy with regard to Protected Structures (policy AEH 11) states that:

*It is the policy of the Council to conserve and protect buildings, structures and sites contained in the Record of Protected Structures that are of special interest and when considering proposals will have regard to the Architectural Heritage Protection Guidelines for Planning Authorities and relevant Conservation and Management Plans where applicable. The Council will proactively work with developers/applicants to facilitate the appropriate reuse/redevelopment of Protected Structures.*

The reference to the Guidelines is to the previous published version, but I consider that in this regard it can be taken as a reference to the updated 2011 Guidelines.

The Tower House has been restored and expanded over several periods, and on two occasions has required retention applications for unauthorised works. The most recent was granted retention with condition by the Board – for a storage shed and solar panel next to the tower house. Condition 2 of the decision had not been discharged at the time of my site visit, but in total the decision gave around five



months for the works to be completed (depending on the speed of the planning authority approving the render).

On foot of condition 3 of permission reference 13/328, the applicant submitted a comprehensive development, conservation and archaeological strategy for the castle – this strategy includes a written proposal for staff accommodation on the site. I note the letter sent by the DoAHG to the planning authority dated 20<sup>th</sup> May 2015, which concluded that:

*‘.it is recommended that the November 2014 strategy be revised and expanded, with more input by the conservation architect, specifically to avoid using general planning precedent and client preferences as a basis for justification of future development and to be less selective about the conservation principles chosen. Future construction of new elements and reconstruction of partially known or suspected elements, and the arrangement of such structure and elements, must be based on sound evidence from this particular site, or comparable sites in the Tipperary area’.*

It is not clear whether this was clearly communicated to the applicant. Notwithstanding this, given the planning context it is clearly incumbent upon the applicant on the basis of condition 3 of permission 13/328 to ensure that the planning authority and DoAHG were satisfied with the longer term strategy for the site, and that the proposals were consistent with published statutory guidelines. I would conclude from the information on file that this was not the case. As I noted in my previous report on this site, much of technical information submitted on the planning history appears to be a post-hoc justification for works already proposed. It seems quite clear that the DoAHG does not consider that the information submitted in support of the proposed development includes sufficient information to assess whether the site is of archaeological importance, or if it is the appropriate location for the proposed use.

The applicant has set out a number of other examples of what are claimed to be similar developments around Tower Houses. I note and concur with the comment by the DoAHG that ‘precedent’ is not an appropriate basis for conservation decisions, but in any event I do not consider that the examples quoted are particularly relevant to the current appeal, in particular as many of the examples given are either older structures that have been re-used, or tower houses used for commercial purposes.

I would consider that while there is no fundamental objection in principle in conservation and architectural terms to a building of the type proposed, it should be in accordance with the published Architectural Heritage Guidelines and condition 3 of permission 13/328 in order to be consistent with Policy objective AEH 11. On the basis of

the information submitted with the appeal, I do not consider this to be the case, so I conclude it is a material contravention of this policy objective, so I would recommend that refusal reason no. 1 of the decision be upheld.

Housing policy

The planning authority refused for policy SS 5 'Individual Houses in Open Countryside', which states:

It is the policy of this Council to facilitate individual houses in the open countryside at locations removed from the following pressure areas; Areas identified as Primary/Secondary Amenity Areas as referred to in Chapter 6 and illustrated in the Appendices of the County Development Plan; National Primary, National Secondary and Regional Roads; On the approach roads to Towns and Villages; and on local roads where there is an existing pattern of ribbon development as set out in the Sustainable Rural Housing Guidelines 2005 (DoEHLG) and any amendment thereof and where the following criteria are met:

The proposal is for an individual house; and it is being made by any one of the following persons

- i) a farmer of the land
- ii) a direct descendent of i) above
- iii) a person who has lived in the open countryside, outside of the Service Centres, within 10km of the proposed location for any 10 year period of that person's life

The house design, siting and layout is in accordance with the Rural Design Guide for Individual Houses in the Countryside as set out in Appendix 4; and the house is for that person's own use; and the applicant can reasonably demonstrate that he/she has a housing need and is eligible under the above criteria. An exception may only be made in Amenity Areas, on Agriculturally zoned land within settlements, on approach roads to towns and villages and on Regional Roads where:

the proposal is for an individual house; and

a) it is being made by any one of the following persons;

- i) a farmer of the land
- ii) a direct descendent of i) above
- b) it is not possible to locate the house on other lands within the family landholding and outside the pressure area; and
- c) the house design, siting and layout is in accordance with the Rural Design Guide for Individual Houses in the Countryside as set out in Appendix 4; and
- d) the house is for that persons own use; and
- e) the applicant has a housing need; and
- f) the applicant can demonstrate that he/she is eligible under the above criteria

g) the proposed development will not prejudice the potential future development of the landholding.

The basis of the refusal is that the planning authority does not consider that the caretaker's accommodation can be considered ancillary to the use, and so normal policy on rural housing applies – and the applicant has not demonstrated that the proposed use would be in accordance with this.

The applicant has responded with an argument that a caretaker for a site such as this would be a normal requirement and is necessary given a known issue with rural crime in the vicinity, something which I assume is the result of easier access due to road improvements in the area. I note that there is seems to be a caretaker on site at present, living apparently in the structure that was subject to a recent Board referral.

I note that a caretakers accommodation was mentioned in the Archaeological Strategy submitted, but I further note that this was never confirmed or accepted by the planning authority or DoAHG.

Given the nature and use of the site, I do not consider that in principle having some type of caretaker/staff accommodation within the curtilage would be unacceptable or necessarily contrary to the policy objections of the development plan. Notwithstanding this, I would (for reasons I will outline in more detail below), have many issues with the proposal as submitted. For a caretakers accommodation to be reasonable within the context of such an important Recorded Monument and protected structure it would have to be incorporated within the context of an agreed conservation strategy, as was required by condition 3 of permission 13/328. On the basis of the comments by the planning authority and DoAHG, it is clear that no such agreed conservation strategy exists, so it is not possible to state that the proposed use represents an optimal solution to providing extra accommodation in accordance with best practice and published guidelines. On this basis, I do not consider that the principle of an additional accommodation unit (as in reality this is what is proposed) is acceptable in the context of rural settlement strategy.

### **Visual impact and setting**

The Tower House is situated in gently rolling countryside, with a distinct ridge to the north. The adjoining road is minor and seems used only by local traffic. The upper stories of the Tower House are visible from many points in the distance, including from the east, around the motorway and regional road. It would be a very distant feature on the landscape when viewed from the Rock of Cashel, just over 8km to the south.

The proposed development is to the front of the Tower House and within its curtilage, next to the minor road running past on the eastern

side. As such, it would be the most prominent feature when seen from the public road, apart from the main Tower House itself and the large gate and railings. The proposed structure is quite low and is vaguely 19<sup>th</sup> Century in form and appearance, neither contemporary in form nor a medieval pastiche. It will block the view toward the Tower House from some points on the road, but not as much as the landscaping which has recently been put in place.

I would consider that while the structure in itself would not be a major negative feature in the landscape, it sits awkwardly in its context. In an historical context, most ancillary buildings around a Tower House would probably have been within or adjoining the bawn. The bawn built around the tower house is modest in scale, and already the previously permitted structure on the outside has complicated the visual relationships in and around the Tower House. Section 13.5 of the Architectural Heritage Protection Guidelines notes the need for new developments to respect the relationship between existing elements and the street. The siting of the proposed development seems almost random and I am not convinced that it would not be much better sited either to the rear of the site or close to, or next to, the bawn. As the intention of the conservation strategy required as part of condition 3 of 13/328 was precisely to identify scope for further developments on the site, and as this has not been agreed fully with the department or the planning authority, I would consider the proposed development to be premature pending the agreement of a longer term strategy for the overall curtilage of the tower house.

### **Archaeology**

The proposed development has been designed without reference to a full archaeological assessment of the site as required under previous conditions. The applicant has argued that a monitoring condition would be standard, but this site is within the curtilage of a Recorded Monument, and is part of a wider medieval complex (including a churchyard further to the south). It is quite clear from the context that a monitoring condition alone would not be adequate and would not reflect the importance of this site. I do not consider that it would be appropriate to grant permission without a full archaeological survey and report on the entire area around the Tower House to ensure the optimal site has been chosen – this should be done prior to any grant of permission, not attached as a condition.

### **Public health**

For reasons not explained anywhere in the submission documents, the proposed development is to have its own wastewater treatment system, while there is already a permitted one on the site. As the Board will note from my photographs there is a significant area of standing water close to the existing percolation area and about 30 metres from the location of the proposed percolation area. I could consider having multiple wastewater treatment systems and percolation areas on such

a restricted site to be wholly inappropriate and bad practice. Therefore, notwithstanding the site suitability assessment submitted, I would concur with the planning authority that the site is unsuitable for the use of the proposed wastewater treatment and disposal system.

### **Appropriate Assessment and EIA**

The only Natura 2000 site within the vicinity is the Lower Suir SAC, about 5 km to the west, and there are no clear pathway for pollution, except insofar as the site is within the catchment of the river. It is reasonable to conclude therefore that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Lower Suir SAC or any other European site in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

Due to the small scale of the proposed development and the absence of any sensitive environmental receptors the question of a requirement for EIA does not arise.

### **Other issues**

The site is not indicated on any available source to be prone to flooding. There are no adjoining buildings or nearby dwellings so I do not consider that there are any issues with regard to residential amenity. While an additional unit on the site would theoretically increase traffic onto a very substandard third class road, I would consider that having regard to the nature of the site it would not have a significant impact on traffic safety or congestion. The proposed development would be subject to a standard s.48 Development Contribution if granted permission.

## **12. Conclusions and Recommendations**

I conclude that the proposed development is contrary to development plan policy and the 2011 Architectural Conservation guidelines and the proposed additional wastewater treatment unit on the site has not been justified so I consider that the stated reasons for refusal should (with amendments) be upheld.

I recommend therefore that planning permission for the proposed building and solar panels be refused the reasons and considerations set out below.

## **REASONS AND CONSIDERATIONS**

1. Policies AEH 11 (Protected Structures) and AEH 13 (Archaeology) of the South Tipperary County Development Plan 2009 states that it is the policy of the Council to conserve and protect buildings, structures and sites of special interest. These policies are considered consistent with national guidelines on the protection of historic structures, including National Monuments and Protected Structures, as set out in the Architectural Heritage Protection Guidelines for Planning Authorities, 2011 (DoAHG). The proposed building is considered to have a significant negative impact on the character and setting of Ballytarsna Castle and the Board is not satisfied, on the basis of the submissions made with the planning application and appeal, that the proposed building, in particular the proposed use as a caretakers apartment, are necessary for the use of the tower house, or could not otherwise have been incorporated into the development in a manner which would not have had a significant negative impact on the character and visual amenities of the area in the absence of an agreed Development Conservation & Archaeological Strategy as required by condition no. 3 of decision reference 13/328. It is therefore considered that the proposed development would be contrary to Policies AEH 11 and AEH 13 of the South Tipperary County Development Plan and thus would not be in accordance with the proper planning and sustainable development of the area.
2. In the absence of an agreed Development Conservation and Archaeological Strategy as required by condition no. 3 of decision reference 13/328 the Board is not satisfied, on the basis of submissions with the application and appeal, that the proposed caretakers unit does not constitute a separate residential unit in a rural area. It is therefore considered that the proposed development is contrary to Policy SS5 of the 2009 South Tipperary Development Plan which seeks to control single houses in the countryside.
3. The Board is not satisfied, on the basis of submissions with the application and appeal, that the use of a separate wastewater treatment system and disposal area within one limited landholding within the curtilage of a protected structure is acceptable. The proposed development would, therefore, be prejudicial to public health.

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**Philip Davis,**  
**Inspectorate.**  
**14<sup>th</sup> January 2016**