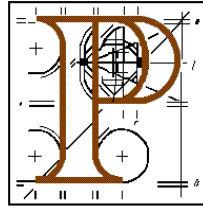


An Bord Pleanála



Inspector's Report

PL15.245479

DEVELOPMENT: Permission to retain and permission to complete a partially-built structure, roof-top lawn and staircase, and permission for the proposed use of the structure for home-based economic use (tour operator – commercial scuba diving) and all associated site development works,
at Upper Faughart, Dundalk, County Louth.

PLANNING APPLICATION

Planning Authority: Louth County Council

Planning Authority Reg. No.: 15/457

Applicant: Abbey Commercial Diving Limited

Application Type: Permission for Retention/Permission

Planning Authority Decision: **REFUSE PERMISSION**
for Reasons and Considerations (3)

APPEAL

Appellant: Abbey Commercial Diving Limited

Type of Appeal: **FIRST PARTY**

Observer: None

DATE OF SITE INSPECTION: 4th December, 2015.

INSPECTOR: Dermot Kelly

1. SITE LOCATION

The subject site is located at Upper Faughart, Dundalk, County Louth, as indicated on **APPENDIX A - LOCATION MAP**.

2. SITE DESCRIPTION

2.1 The subject site lands at Upper Faughart, Dundalk, County Louth are approximately 0.328 hectares in area and comprise a single-storey residential property. There are existing single-storey residential properties on adjacent sites on either side of the subject site on the western side of the local road. There is an existing permitted Domestic Garage (area 96 square metres) – and an adjoining partially-built Commercial Structure (area 128 square metres) which is proposed to be retained/completed – to the rear of the dwelling on the subject site.

2.2 The submitted Planning Report described the Application Site:
'The application site is located along the L3097 in Upper Faughart approximately 4 kilometres north of Dundalk. The property comprises of a single storey bungalow dwelling, garden, yard area and garage structure completed to wall plate height and the unfinished structure the subject of this application. The property is set within a large plot of sloping ground which rises westwards. The site topography has been cut into and secured behind a retaining wall within which the garage and subject structure sit. The area to the side and rear of the existing dwelling are finished in compacted sand and gravel.

The subject structure comprises of concrete floor and flat roof constructed from concrete beams. The western walls forms part of the retaining wall and the southern wall is shared with the adjoining garage. The northern and eastern walls form part of the application seeking retention and completion permission. A door is installed in the eastern wall and a gap remains for the installation of a garage door. A single door links the subject structure with the abutting incomplete garage structure'.

2.3 The attached Photographs in **APPENDIX B – PHOTOGRAPHS** (including Key Plan which indicates the approximate Photograph locations) illustrate the nature of the subject site and its context.

3. PROPOSED DEVELOPMENT

Planning Application

- The proposed development comprises as specified in the Public Notices: Permission to retain and permission to complete a partially-built structure, roof-top lawn and staircase, and permission for the proposed use of the structure for home-based economic use (tour operator – commercial scuba diving) and all associated site development works, at Upper Faughart, Dundalk, County Louth.
- The proposed development was described in the Planning Report submitted with the Planning Application including as follows:
‘The completed structure’s eastern wall is to be finished in a natural stone cladding. The roof area will be bound by a safety barrier and the proposed steps positioned between the subject structure and existing northern retaining wall will afford access to this amenity area and sloping garden area to the rear.
The structure’s 128 square metres internal floorspace will be used exclusively for commercial purposes as a base of operations, secured storage facility and maintenance area for the commercial and tourism business operated for and by the property owner....’
- The Planning Report for the Planning Authority stated:
‘It is proposed that the commercial change of use will be for a business Abbey Commercial Diving Limited which operate a commercial diving business for ports authorities in various fishing and marine based industries and privately. The range of operations occurs in both open coastal waters, harbours, lakes and rivers’.

4. NOTIFICATION OF DECISION OF PLANNING AUTHORITY

- Submissions and Relevant Reports

4.1 Third Party Submissions (3) on Planning Application

The Submissions received from residents in the area are noted and express support for the planning application including by reason of minimal visual impact as stated. The Submissions include specifying where the houses of these residents who support the proposed development are located.

4.2 Infrastructure Section Report

This report, dated 17th August, 2015 included recommending that Further Information regarding sightlines as specified be requested.

4.3 Planning Report for Planning Authority

- This report dated 18th August, 2015 included documenting the Planning History of the subject site and relevant provisions of the Development Plan and noted the Third Party Submissions (3) and the Infrastructure Section Report.
- The Planning Report stated under 'Commercial Development':
'The principle of commercial development in the countryside is included in Policy RD5, RD34 and RD35. There is a principle against commercial development at this location, essentially comes down to the justification in relation to a '*homebased enterprise*' where the applicant must demonstrate that they have a site specific link to the rural area. The planning support statement with this application does indeed state that the '*business occurs off site at various locations*' but goes on to justify the use at this specific location based on the security of the equipment beside the applicant's home. This cannot be a justifiable reason for a rural based enterprise as adequate security can be provided for a range of different uses at a variety of locations including urban'.
- It was considered that this type of commercial activity should be located in an urban settlement and that the proposed development would result in overlooking of adjoining residential properties in contravention of Policy RD5 in the 2009-2015 Louth County Development Plan.
- 'The retained and proposed structures would not interfere with the character of AHSQ 1 and the views and prospects afforded by SR1 and VP12 due to the cut into the backdrop of the dwelling. I do not consider that the overall structure could be reasonably construed as interfering with the character of the landscape yet there are possibly additional significant impacts from extensions and alterations to these structures at this site'.

- Refusal of permission was recommended for the Reasons and Considerations (3) as stated in the notification of decision of the Planning Authority.

4.4 Notification of Decision of Planning Authority

- The Planning Authority, Louth County Council, issued a notification of decision to **REFUSE PERMISSION** for the proposed development for Reasons and Considerations (3):
 1. Policy RD5 states 'To encourage the development of alternative rural based enterprises, including home based enterprises, where the scale and nature of such enterprises are not detrimental to the amenity of the area, adjoining dwellings and where the proposal can meet all other planning requirements. Any proposals must demonstrate that they have a site specific link to the rural area, is appropriate for the site size, and be of a scale commensurate with the rural area'. There is not justifiable reason for this proposed commercial development to be defined as an alternative rural based enterprise with a site specific link to the rural area. In addition to this the design of the structure is such that it has a detrimental effect of the residential amenity of adjoining dwellings. Therefore the proposal is contrary to Policy RD5 of the Louth County Development Plan 2009-2015.
 2. There is no evidence to suggest that the location of the proposed commercial development at this location and the inclusion of a roof garden will have no negative impact on the existing and surrounding dwellings. Therefore the structure and the proposed use of the structure would seriously injure the amenities of properties in the vicinity and be contrary to Policy RD5 of the Louth County Development Plan 2009-2015.
 3. The infrastructure section are not satisfied that adequate sight lines have been provided for a non-domestic development, therefore It cannot be concluded that proposed development would not endanger public safety by reason of a traffic hazard.

5. APPEAL GROUNDS

First Party Appeal

- The First Party Appeal Grounds included documenting the Proposed Development and Background, the Application Site, Planning Context and Planning History.
- The Appeal Grounds relating to Refusal Reason No. 1 included stating as follows: 'An off-site location which provides the same level of security and assuredness as the appeal structure would incur a considerable cost (rent, rates, overheads, insurances and running costs) which this small start-up business would find prohibitively and impractically expensive..... Furthermore with the business being operated from within the Appellant's residential property it can be run more effectively and efficiently than any office off-site could ever'.
- It was noted that the previous Inspector's Report on the Section 5 Declaration Referral (PL15.RL3178) and the Planning Report for the Planning Authority considered as stated in the latter Report that '...the visual impacts are not overtly detrimental'.
- The Appeal Grounds relating to Refusal Reason No. 2 included:
'The appeal site is on a slope with the rear garden on a higher elevation than the subject structure, approved garage and main dwelling. The property's front garden slopes downwards to meet the adjoining rural road. The neighbouring dwellings, ancillary buildings and gardens share a similar topographical arrangement. Consequently there is a history of these residences overlooking each other with no significant or adverse impact upon their existing amenities.
The County Council's concern regarding overlooking from the 'roof garden' failed to appreciate that prior to the construction of the appeal structure, the sloping rear garden was at the same level as the 'roof garden'.'
- The Appeal Grounds relating to Refusal Reason No. 3 included:
'The third reason for refusal presumes an objection from the Council's Infrastructure Section which is not in evidence. The Infrastructure Section requested further information regarding the specifications of the existing entrance but did not express an objection to this aspect of the proposal.....

The attached drawings Drg. No. HE-APP-1322-001 and Drg. No. HE-APP-1322-002 indicates 'adequate sightlines' and 'the proposed commercial use of the appeal structure will not create any traffic hazard or safety issue for existing road users'.

6. APPEAL RESPONSES

6.1 Appeal Observation

No Appeal Observation was received.

6.2 Planning Authority Appeal Response

This Appeal Response received 8th October, 2015 included stating:

'The appellant has argued that the Planning Authority has not considered in its assessment that this use can be reasonably used by the applicant for storage of its own private boats, cars etc.....'

'In addition to the security argument the appeal statement includes for costings of rent, rates, insurances etc, as a reason not to locate the commercial activity within a designated settlement. This cannot be realistically considered as a planning reason to locate in the countryside', and also

'It is argued by the Planning Authority that Policy RD5, RD34 and RD35 do not support the diving business at this location. The Planning Authority have recently adopted a development plan for 2015-2021 which included an emphasis on supporting climate change and sustainable development and therefore the direction of commercial business should be directed towards those serviced settlements of County Louth'.

7. PLANNING HISTORY

- The Planning Report for the Planning Authority documented the Planning History of the subject site including as follows:
14/383: Split decision on the 3rd November, 2014 for refusal of the fuel structure, boiler house, external staircase and roof lawn. Permission is granted for domestic garage, retaining walls and site development works.
03/1848: Double domestic garage to rear of dwellinghouse for the storage of personal classic car collection permitted.

06/1197: First floor extension to dwellinghouse and alteration to external finish of the dwellinghouse permitted.

13/448: Retention and completion of partially built garage and retaining walls: application declared invalid.

13/U039: Enforcement file for unauthorised development.

S52013/14: Fuel storage structure and boiler house declared to be non-exempted development under Section 5 of the Planning and Development Act, 2000 – 2012.

88/70: Dwellinghouse permitted for applicant.

- An Bord Pleanála on 16th June, 2014 in the Referral (Ref. 15.RL.3178) decided that ‘the said building comprising fuel storage structure and boiler house provided as part of the heating system of a house at Upper Faughart, Dundalk, County Louth is development and is not exempted development’.

8. DEVELOPMENT PLAN

The provisions of the 2015-2021 Louth County Development Plan have been considered, and in particular the following provisions which are attached in **Appendix C – Development Plan:-**

- The ‘Development Zone 2’ land use zoning objective for the subject site: ‘To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community’.
- The Planning Report for the Planning Authority documented relevant provisions in the Development Plan including:
‘Map 6.2 of the Louth County Development Plan 2009-2015 (CDP) shows the (referrer’s) residential property as lying within an Area of High Scenic Quality (AHSQ 1 Feede Mountains and Cooley Area) and, variously, to the east and south-east of a Scenic Route (SR1 Faughart Hill, Faughart Upper) and a View Point (VP12 Faughart Hill). Recreation and Amenity Policies 6 and 11 of the Louth County Development Plan 2009-2015 variously, state ‘to protect the unspoilt rural landscapes of the AHSQ for the benefit and enjoyment of current and future generations’ and ‘to preserve the views and prospects of special amenity value...’
- Section 3.3.1 – ‘Rural Enterprise’ in particular Policy RD 4.

9. PLANNING ASSESSMENT – Issues and Evaluation

- The subject site lands at Upper Faughart, Dundalk, County Louth are approximately 0.328 hectares in area and comprise a single-storey residential property. There are existing single-storey residential properties on adjacent sites on either side of the subject site on the western side of the local road. There is an existing permitted Domestic Garage (area 96 square metres) – and an adjoining partially-built Commercial Structure (area 128 square metres) which is proposed to be retained/completed – to the rear of the dwelling on the subject site.
- The submitted Planning Report described the Application Site:
‘The application site is located along the L3097 in Upper Faughart approximately 4 kilometres north of Dundalk. The property comprises of a single storey bungalow dwelling, garden, yard area and garage structure completed to wall plate height and the unfinished structure the subject of this application. The property is set within a large plot of sloping ground which rises westwards. The site topography has been cut into and secured behind a retaining wall within which the garage and subject structure sit. The area to the side and rear, of the existing dwelling are finished in compacted sand and gravel.
- The proposed development comprises as specified in the Public Notices: Permission to retain and permission to complete a partially-built structure, roof top lawn and staircase, and permission for the proposed use of the structure for home-based economic use (tour operator – commercial scuba diving) and all associated site development works, at Upper Faughart, Dundalk, County Louth.
- The proposed development was described in the Planning Report submitted with the Planning Application including as follows:
‘The structure’s 128 square metres internal floorspace will be used exclusively for commercial purposes as a base of operations, secured storage facility and maintenance area for the commercial and tourism business operated for and by the property owner....’
- The Planning Report for the Planning Authority included considering that this type of commercial activity should be located in an urban settlement and that the proposed development would result in overlooking of adjoining residential properties in contravention of Policy RD5 in the Development Plan. It was also

considered that 'the overall structure could be reasonably construed as interfering with the character of the landscape yet there are possibly additional significant impacts from extensions and alterations to these structures at this site'.

- The Planning Authority, Louth County Council, issued a notification of decision to **REFUSE PERMISSION** for the proposed development for Reasons and Considerations (3) i.e. Reasons 1 and 2 – Contravention of Policy RD5 of the 2009-2015 Louth County Development Plan, and Reason 3 – Inadequate sightlines for a non-domestic development.
- The First Party Appeal Grounds included documenting the Proposed Development and Background, the Application Site, Planning Context and Planning History and included submitting: 'With the business being operated from within the Appellant's residential property it can be run more effectively and efficiently than any office off-site could ever', and also it was noted that the previous Inspector's Report on the Section 5 Declaration Referral (PL15.RL3178) and the Planning Report for the Planning Authority on the present proposed development considered as stated in the latter Report '...the visual impacts are not overtly detrimental'.
- The First Party Appeal Grounds also submitted that 'the County Council's concern regarding overlooking from the 'roof garden' failed to appreciate that prior to the construction of the appeal structure the sloping rear garden was at the same level as the 'roof garden'. The submitted drawings indicated 'adequate sightlines' at the site entrance onto the local road and 'the proposed commercial use of the appeal structure will not create any traffic hazard or safety issue for existing road users'.
- The Planning Authority Appeal Response included:
'In addition to the security argument the appeal statement includes for costings of rent, rates, insurances etc, as a reason not to locate the commercial activity within a designated settlement. This cannot be realistically considered as a planning reason to locate in the countryside', and also
'The Planning Authority have recently adopted a development plan for 2015-2021 which included an emphasis on supporting climate change and sustainable development and therefore the direction of commercial business should be directed towards those serviced settlements of County Louth'.

- Having regard to the above submissions and having inspected the site and having reviewed all documents on file, the following is my assessment of this case where the major planning issues for consideration relate to provisions in the current *2015-2021 Louth County Development Plan*.
- I note the stated Reasons and Considerations (3) in the notification of decision the Planning Authority to refuse permission for the proposed development related to provisions as stated of the previous 2009-2015 Louth County Development Plan.
- The relevant provisions for the determination of this appeal are the provisions of the current 2015-2021 Louth County Development Plan, and in particular the provisions of Section 3.3.1 – ‘Rural Enterprise’ and Policy RD4 – where Policy RD4 is effectively similar to Policy RD5 as specified in the Reasons and Considerations Nos. 1 and 2 of the notification of decision of the Planning Authority to refuse permission for the proposed development.
- I note that the subject site is located within an area zoned *Development Zone 2*: ‘To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community’ as indicated on the *Development Plan Development Zones Map 3.1*, and within an *Area of High Scenic Quality* and adjacent to *Scenic Route 1* and to the south-west of *View Point 13 (Faughart Hill)* as indicated on the attached *Development Plan Map – Scenic Routes, Views and Prospects* – see *Appendix C*.
- Further to site inspection I consider that the proposed development to the rear of the existing dwelling on the subject site, would not be unduly visually prominent or detract from the above amenity designations in the *Development Plan* for this area.
- In this regard I refer to the Photographs in *Appendix B* of this report and note that the double garage and the structure the subject of this planning application, are set into the large garden area to the rear of the dwelling, and that the *Planning Report* for the Planning Authority considered that the structure could not be construed as ‘interfering with the character of the landscape’ in this area.

- In my opinion no additional overlooking of the adjoining residential properties would occur further to the proposed development in regard to the roof-top garden above the structure in question – which garden levels would reflect the levels previously of the sloping rear garden in this area.
- I consider *Section 3.3.1 – ‘Rural Enterprise’* in the 2015-2021 Louth County Development Plan is relevant to the proposed development in particular where stated as follows:
‘Low impact rural and marine resource based industrial, commercial, business and service uses which contribute to supporting diversification and growth of the rural economy may be considered. *Such proposals must demonstrate that they are intrinsically linked to the rural area and cannot be operated from existing urban settlements in County Louth.* Acceptable uses which may be considered can include but is not exhaustive of;
Agricultural diversification proposals,
Provision of tourism facilities. The type of facilities envisaged would be renovation of farm buildings for tourism purposes, walking, cycling, angling, pony trekking, bird watching etc,
Development of niche tourism and education services such as arts and crafts, speciality food provision, open farms etc,
Development of farm shops selling home/locally grown and manufactured products,
Organic food production,
Small scale renewable energy projects,
Marine based enterprises including mariculture,
Low impact rural and marine resource based industry/commercial/business.
The scale of such enterprises should not be detrimental to surrounding residential amenity, prejudice road safety, compromise the Natura 2000 network or threaten surface water or groundwater sources. All such proposals will be assessed on a case by case basis’.
- In regard to the proposed development which is specified in the public notices as a *tour operator – commercial scuba diving* enterprise, it is evident in my opinion that the subject site location in a rural area at Upper Faughart, does not comply with the requirement under *Section 3.3.1 – ‘Rural Enterprise’* in the Development Plan above: *‘Such proposals must demonstrate that they are intrinsically linked to the rural area and cannot be operated from existing urban settlements in County Louth’.*

- On this matter I concur with the Planning Authority where stated in Reasons and Considerations No. 1 of the notification of decision in regard to Policy RD5 in the 2009-2015 Louth County Development Plan: *'There is not justifiable reason for this proposed commercial development to be defined as an alternative rural based enterprise with a site specific link to the rural area'*.
- I also note in *this regard* Policy RD4 in the 2015-2021 Louth County Development Plan which states:
 'To encourage the development of alternative rural based enterprises, including home based enterprises, where the scale and nature of such enterprises are not detrimental to the amenity of the area, adjoining dwellings and where the proposal can meet all other planning requirements. *Any proposals must demonstrate that they have a site specific link to the rural area, are appropriate for the site size and be of a scale commensurate with the rural area'*.
- While I accept that the proposed development would not unduly detract from the visual amenity of the area as already stated above, I note that *Policy RD4* in the Development Plan requires:
'Any proposals must demonstrate that they have a site specific link to the rural area', and that Section 3.3.1 – 'Rural Enterprise' in the Development Plan requires: 'Such proposals must demonstrate that they are intrinsically linked to the rural area and cannot be operated from existing urban settlements in County Louth'.
- The Planning Report for the Planning Authority documented the nature of the proposed use as follows: 'It is proposed that the commercial change of use will be for a business Abbey Commercial Diving Limited which operate a commercial diving business for ports authorities in various fishing and marine based industries and privately. The range of operations occurs in both open coastal waters, harbours, lakes and rivers'.
- As such I consider that the proposed development/proposed development to be retained would contravene Section 3.3.1 'Rural Enterprises' and Policy RD4 in the 2015-2021 Louth County Development Plan in that there is no site specific link to this rural area for the proposed *tour operator – commercial scuba diving* enterprise as specified in the public notices, and on this matter I concur with the Planning Authority.

- In this context I note that the Planning Authority has previously granted permission for a large double garage structure (area 96 square metres) on the subject site which adjoins the partially-built structure (area 128 square metres) – which is the subject of the present planning application – as documented in the Planning Report for the Planning Authority as follows: ‘14/383: Split decision on the 3rd November, 12014 for refusal of the fuel structure, boiler house, external staircase and roof lawn. Permission is granted for domestic garage, retaining walls and site development works’.
- The extent of the proposed development/proposed development to be retained (128 square metres) for the specified ‘commercial use for scuba diving business’ in conjunction with the permitted garage development (96 square metres – Ref. 14/383) to the rear of the single-storey dwelling on the subject site, is noted and on balance I concur with the Planning Authority that it is appropriate that permission be refused in this case.
- I note that the First Party Appeal Grounds have submitted that adequate sightlines are available at the existing entrance into the residential property. Commercial traffic associated with the proposed rural-based enterprise – as vehicles/equipment would be required to be transported to the various locations as specified above – would be generated on the local road which narrows to the north and south of the section of the road in the vicinity of the subject site frontage, see Photographs 1 and 2 in Appendix B.
- I note also that this local road is a designated Scenic Route 1 (SR1 Faughart Hill, Faughart Upper) and that such traffic generation would form an additional impact of the proposed commercial development in this rural area. Any intensification of the proposed commercial development would result in additional impacts in the rural area in particular on the amenities of adjoining residential properties.

Appropriate Assessment

Having regard to the location of the subject site and to the nature and scale of the proposed development, I consider that no Appropriate Assessment issues arise in this case. It is not considered that the proposed development either individually or in combination with other plans or projects, would be likely to have a significant effect on a European Site.

10. CONCLUSIONS AND RECOMMENDATION

In conclusion, further to the above planning assessment of matters pertaining to this appeal, including consideration of the submissions of each party to the appeal, and including the site inspection, I consider that the proposed development/proposed development to be retained would be contrary to the proper planning and sustainable development of the area, having regard to the relevant provisions of the 2015-2021 Louth County Development Plan which are considered reasonable. Accordingly, I recommend that permission be refused for the proposed development/proposed development to be retained for the Reasons and Considerations stated in the Schedule below.

DECISION

REFUSE permission for the proposed development/proposed development to be retained for the Reasons and Considerations set out below.

REASONS AND CONSIDERATIONS

1. The proposed tour operator – commercial scuba diving development in this rural area at Upper Faughart would contravene Section 3.3.1 – ‘Rural Enterprise’ in the 2015-2021 Louth County Development Plan where stated that ‘such proposals must demonstrate that they are intrinsically linked to the rural area and cannot be operated from existing urban settlements in County Louth’, and would also contravene Policy RD4 in the Development Plan relating to ‘rural-based enterprises including home-based enterprises’ where stated that ‘any proposals must demonstrate that they have a site specific link to the rural area’, and the proposed development/proposed development to be retained would therefore be contrary to the proper planning and sustainable development of the area.

DERMOT KELLY
SENIOR PLANNING INSPECTOR

18th December, 2015.

sg

- APPENDIX A - LOCATION MAP
- APPENDIX B - PHOTOGRAPHS (incl. KEY PLAN)
- APPENDIX C - DEVELOPMENT PLAN