



An  
Bord  
Pleanála

## Inspector's Report PL.27.246876

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<b>Development</b>	Permission for 2 sets of semi-detached dwellings, the provision of 8 no. car parking spaces, connection to existing services and associated works also demolition of existing shed on site.
<b>Location</b>	Sherridan's Paddock, Aughrim, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	15/1309
<b>Applicant(s)</b>	Eugene O'Brien
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Appellant(s)</b>	First Party v Refusal
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	2 <sup>nd</sup> September 2016
<b>Inspector</b>	Dáire McDevitt

## **1.0 Site Location and Description**

- 1.1** The application site is located within Aughrim town centre. The site is known as Sherridan's Paddock. Adjoining the site to the west are 2 refurbished town houses (formerly Sherridans Public House). The site is bounded along the south west boundary by a landscaped area. The Aughrim river runs along the northern boundary and the southeastern boundary is bounded by the access road to Jubilee, Meath and Fogarty's cottages. The roadside boundaries are made up of a stone wall. The existing shed on site to be demolished constructed of galvanised steel is open to the elements and has an area of c. 36sq.m.
- 1.2** The overall area is characterised by old single storey cottages (Jubilee, Fogarty's and Meath cottages) and two storey houses with associated open spaces. The site is located in a picturesque part of the village, c. 45m east of Aughrim Bridge and is prominent when viewed from the southern approach along the R753. The Lawless Hotel is located along the adjoining R753. Access to the site is off a local road (St. Martin's Drive) which joins the R753 at Aughrim Bridge.
- 1.3** Maps and photographs included in the pouch.

## **2.0 Proposed Development**

Permission sought for 4 houses (2 sets of semi-detached) and demolition of shed on site. The original proposal had the houses set back from the road with carparking located to the front of the houses and the rear gardens bounding the Aughrim river.

The development was subsequently revised and re-advertised. This consisted of changes to house design, site layout (houses moved forward on the site in line with the established building lines to the west) and carparking relocated from the front of the site to the side and rear. Revised proposals were on foot of a Flood Risk Assessment and flood mitigation measures required. It is this revised proposal, therefore, that is effectively before the Board on appeal.

Documentation with the application includes a Flood Risk Assessment Report.

The Key findings of Flood Risk Assessment are summarised below:

- The mitigating measures arising from the flood impact assessment were incorporated in the revised proposals submitted.
- The proposed development ground floor level is 67.5mOD which provides an estimated freeboard between 1.5m and 0.2m, the significant variation relating to the interpolation of the range of flood depths presented on the OPW Flood Map. A design flood level of 67.0m was deemed to be appropriate and to provide an appropriate level of mitigation providing the widely applied freeboard height of 500mm.
- The study notes that the avoidance of displacement storage is practically unavoidable. However, the revised development proposal has minimized the impact by allowing the flood water to extend into the footprint of the building by creating voids as part of the structure that is situated below the 0.1% AEP flood level.

- The volume of the building structure will displace approximately 40 cubic metres of flood water during the 0.1% AEP event which will be compensated by the lowering of existing ground levels as part of the development. SK Drawing No. 903 01(A) PI indicates the proposed ground levels in the paved and landscaped areas which will provide a total compensation storage volume of 200 cubic metres. This far exceeds the displaced storage volume.
- The proposed ground levels at the rear of the site provide compensatory storage and have been determined to also ensure that existing flood routes across the site are maintained and improved. The flood water which builds up in front of the site will be conveyed to the river and away from the development.
- The study concludes that because of the flood mitigation measures proposed as part of the revised development, the residual flood risk is deemed to be acceptable. There is no unacceptable risk of flooding arising from, or no unacceptable residual flood risk to, the proposed development.
- The site is considered acceptable for residential development when assessed against the requirements set out in the Departmental guidelines.
- Revised development proposal incorporating the findings and recommendations submitted

The Justification Test, required under Section 5.15 of the Flood Risk Management Guidelines, includes:

- The subject lands are located in the core of Aughrim town and surrounded by existing residential development.
- The site has been designated RE, Existing Residential zoned lands on which appropriate infill residential development is permitted.
- The site is located in an area with an established pattern of development.
- The Planning Authority acknowledged that the site is suitable for residential development.
- The site is fully serviced
- Applying the sequential test, the site is ripe for infill development located within the town centre and not on the periphery.

### **3.0 Planning Authority Decision**

#### **3.1 Decision**

Permission was refused for the following reasons:

1. The proposed development would be premature because of the existing deficiency in the existing Aughrim wastewater treatment plant and because this deficiency is unlikely to be made good within the lifetime of a permission.
2. Given the revised proposals which require the raising of the dwelling at a height of over 1m above the existing public road, the provision of railings on the inside of the roadside stone wall boundary, the elevated access path, and the lack of detail with respect to internal boundary finishes it is

considered that the development would be incongruous and would result in a negative visual impact at this point, contrary to the amenities of the area and to proper planning and sustainable development.

3. The proposed development is located adjoining the Aughrim River in an area identified as Flood Zone A where the probability of flooding from rivers is highest i.e greater than 1 in 100. The Planning System and Flood Risk Management Guidelines for Planning Authorities November 2009 provide that development in such areas should be avoided, and only considered in exceptional circumstances and where the justification test has been applied. The location of the development is within the centre of Aughrim however there are additional residential zoned lands in the town, and the development would not add to the attractiveness of Aughrim having regard to the revised details submitted, and therefore it, is not considered that the proposal has been sufficiently justified, and the development would therefore be contrary to the proper planning and sustainable development.

### **3.2 Planning Reports (5<sup>th</sup> February 2016 and 2<sup>nd</sup> June 2016)**

The Planning Authority included in its assessment the new Information and revised public notices received by the Planning Authority on the 7<sup>th</sup> April 2016.

The Planner's Reports form the basis for the Planning Authority's decision.

The main points are summarised as follows:

- *There are no proposals to increase capacity of the Aughrim wastewater treatment plant at present. The EPA Licence requires that the treatment plant has capacity to cater for the volume arising from the town, but this does not include requirement for such an upgrade to allow for additional capacity.*

- *It is noted that Irish Water are carrying out reviews to improve performance of the existing plant but this is only to deal with current capacity issues and is not looking at future developments.*
- *The issues of visual impact have not been addressed. To overcome flooding issues, it is proposed to 'lift' the houses and the visual impact of raising the houses has not been addressed. The visual impact of railings along the stone wall is also noted.*
- *The proposal to overcome the impact of flooding by raising the levels of the houses and building them on platforms is not fully engineered in the details submitted.*

### **3.3 Other Technical Reports**

**Transportation & Planning Section:** Recommended Clarification of Further Information on footpaths, an Autotrack analysis and Surface water details.

**Irish Water:** Recommendation: No Objection Class 1.

However, Report notes *"the existing treatment plant at Aughrim is severally deficient and is hydraulically and organically overloaded resulting in wastewater discharging untreated to the river. There are no current proposals to upgrade the plant at present to deal with the inadequacies of the system, therefore in the absence of proposals to overcome the polluting issues with respect to this plant further discharges into the plant are considered unacceptable"*.

**Inland Fisheries Ireland:** Serious concerns outlined in comments dated 30<sup>th</sup> March 2016 and reiterated on the 30<sup>th</sup> May 2016.

- *It is planned that sewerage from the development would discharge to Aughrim wastewater treatment plant (WWTP). The WWTP discharges to the Aughrim river. The Aughrim River is an important salmonoid*

*system supporting significant populations of salmon, brown trout, river, brook and sea lamprey and freshwater pearl mussel listed under Annex II and V of the Habitats Directive.*

- *The Aughrim WWTP is subject to EPA licence D02220-01. The plant has a designed capacity of 1200 population equivalent (p.e) and in 2012 has been non-compliant with the emission limits set out in the discharge licence. Of particular concerns is the fact that a substantial portion of wastewater entering the plant is discharged as partially treated to the Aughrim River via a secondary discharge point. In accordance with the licence the plant is to be upgraded by December 2017 including cessation of this secondary discharge point.*
- *In light of the existing deficiency in the plant and the planned upgrade by December 2017 it is suggested that a condition of permission be that connection to the WWTP be subject to the commissioning of the upgraded plant and its compliance with the conditions of EPA licence D02220-07.*

### **3.4 Third Party Observations**

Four submissions were received from residents of Jubilee Row, Fogarty's Terrace and Meath Terrace.

The main issues raised are summarised below:

- The entrance to the proposed development is at the start of the cul-de-sac for the existing row of cottages (Jubilee, Fogarty's and Meath cottages). This will increase traffic at the top of what is a narrow road, with additional problems of access when cars are parked on the road (which is a frequent occurrence). There are also safety issues with the entrance close to the corner where cars are turning.



- The existing stone wall at the boundary of the road and the proposed development is an old wall that is part of the character of the area and as such should not be removed.
- The style of the proposed townhouses positioned close to the existing cottages will be out of character with the old cottages.
- Loss of light.
- History of flooding.
- No capacity in Aughrim Wastewater Treatment Plant.

#### **4.0 Planning History**

**14/2057**, Application lodged in 2014 for permission for 4 no. dormer style semi-detached bungalows, withdrawn in January 2015.

The Planners Report in the subject case refers to it in the Planning History Section. A recommendation to refuse permission was made on the grounds of building line, lack of flood impact assessment, deficiency in Aughrim wastewater treatment plant

#### **5.0 Policy Context**

##### **5.1 Wicklow County Development Plan 2010-2016**

###### **Volume 3. Chapter 2. Aughrim Town Plan**

The site is located on lands under Land Use Zoning '*RE*' *To provide for residential development to provide new communities and to protect and improve residential amenity.*

**Relevant Objectives include:**

- *Encourage in-fill housing developments, the use of under-utilised and vacant sites and vacant upper floors for accommodation purposes and facilitate higher residential densities at appropriate locations, subject to a high standard of design, layout and finish;*
- *In the RE zone, house improvements, alterations and extensions and appropriate infill residential development in accordance with principles of good design and protection of existing residential amenity will be permitted. While new developments shall have regard to the protection of the residential and architectural amenities of houses in the immediate environs, alternative and contemporary designs shall be encouraged (including alternative materials, heights and building forms), to provide for visual diversity.*

**5.2 Infrastructure Objectives, include:**

**5.2.1 Wastewater facilities**

*Aughrim is served by an aeration wastewater treatment plant located between the river the R747 on the south-east side of the town. This plant has a design capacity of 1,200pe and therefore will require improvement during the course of this plan. No new development shall be permitted unless there is adequate capacity in the wastewater collection and treatment system.*

**Section 5.3.3 Small Growth Towns (Level 5)**

**UD6** *The settlements in Levels 5 shall be re-inforced as attractors for more indigenous growth and investment and shall absorb demand for new housing from inside and outside the County subject to the following controls*

- *In any new multi-house development, a minimum of 50% of new houses shall be sold to persons that have been living and/or working in County Wicklow for at least 1 year. There are no restrictions of the remaining 50%.*

Wicklow is in the process of reviewing its development plan and currently preparing a County Development Plan for the period 2016-2022.

## 5.2 Draft Wicklow County Development Plan 2016-2022

### Volume 2. Town Plans and Settlement Plans.

Level 5 Town: Aughrim

**Map: Indicative Flood Zoning. Site is included on Flood Zone A: High likelihood of flooding. Where the probability of flooding from rivers and the sea is highest (greater than 1% or 1 in 100 for river flooding or 0.5% or 1 in 200 for coastal flooding).**

#### 2.7 Service Infrastructure

##### **Flooding**

*Parts of Aughrim are at flood risk. Lands at a high and moderate risk of flooding are identified on the attached flood risk maps.*

## 5.3 The Planning System and Flood Risk Management Guidelines.

### **Guidelines for Planning Authorities (2009)**

The application site is located on lands identified as Flood Zone A.

#### **Section 2.23 Flood Zones.**

*Flood Zone A – where the probability of flooding from rivers and the sea is highest (greater than 1% or 1 in 100 for river flooding or 0.5 % or 1 in 200 for coastal flooding).*

**Zone A – High probability of flooding.** *Most types of development would be considered inappropriate in this zone. Development in this zone should be avoided and/or only considered in exceptional circumstance, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Only water-compatible development, such as docks, Marinas, dockside activities that require a waterside location, amenity open space, outdoor sports and recreation, would be considered appropriate in this zone.*

- **Table 3.1** Sets out the Classification of vulnerability of different types of development. It identifies ‘dwellings’ as Highly vulnerable development, therefore a Justification Test applies.

- **Table 3.2** sets out the matrix of vulnerability versus flood zones to illustrate appropriate development and that required to meet the Justification Test. The site is identified as one required to meet the Justification Test.

## **Chapter 5**

**Section 5.15** Sets out the application of the Justification Test in Development Management.

### **6.0 Natural Heritage Designations**

6.1 The nearest designated European sites are:

- Wicklow Mountains SAC (site code 002122) is c. 12km north of Aughrim village
- Kilpatrick Sandhills SAC (site code 001742) is c. 18km southwest of the site)
- The site is bounded by the Aughrim river, however there are no links to the above European sites.

6.2 The Aughrim River is recognised as an important salmonoid system supporting significant populations of salmon, brown trout, river, brook and sea lamprey and fresh water pearl mussel listed under Annex II and V of the Habitats Directive. The Aughrim River joins with the Avoca River. Neither river is a designated European Site.

### **7.0 The Appeal**

#### **7.1 Grounds of Appeal**

The main grounds of the first party appeal can be summarised as follows:

- Current application addresses the reasons for refusal under 14/2057 for 4 no. dormer bungalows on site (file was withdrawn)
- Irish Water has no objection to the development of 4 houses on site.
- The Planning Authority's report (2<sup>nd</sup> June 2016) states that there are no proposals to increase the capacity of Aughrim Wastewater Treatment Plant. This is not accurate as the EPA Licence for Aughrim wastewater Treatment Plan states that improvements must be carried out to the Aughrim wastewater treatment plant before December 2017.
- A conditions could be attached delaying the connection to the Waste Water Treatment Plant until the improvements are carried out.
- The visual impact of the railings has been exaggerated by the Planning Authority. The applicant considers the railings to be the most acceptable proposals, however is willing to increase the height of the stone wall if the Board deem it appropriate.
- The elevated access path is screened from the public road by the stone wall, therefore has no visual impact.
- It is not clear what boundary treatment details are lacking nor is it clear why this statement was used in a reason for refusal.
- The contextual elevation shows that, in terms of height, character, mass and fenestration, the proposed houses can be assimilated quite well with the adjacent houses to the west.
- There is a significant gap between the subject site and the Jubilee single-storey cottages to the east and the applicant believes that there is a sufficient visual buffer, to protect the character of these cottages. The retention of the stone wall screens the dead area between finished floor level and ground level and the ramped access way to the houses.

- Given the design imperatives arising out of the Flood Risk Assessment which requires the raising of the floor level of the houses on site, the applicant believes that the visual impact of the proposed houses is not significant.
- The benefit of finding a sustainable use for this fully serviced town centre site and preventing it from being unused and obsolescent in the future. The applicant is of the opinion that the proposed revised development would benefit this streetscape by creating a greater sense of enclosure and closing a large gap in the streetscape.
- By reference to the Flood Risk Assessment carried out it is considered that there is no unacceptable risk of flooding arising from, or no unacceptable residual flood risk to, the proposed development.
- The Planning Authority has no issue with the mitigation measures proposed in relation to flooding, except for believing that the requirements as set out in the justification test has not been met.
- Justification Test
  - Site is zoned for Residential development and is particularly suitably located for infill residential development.
  - It has been demonstrated that the proposed development will not increase flood risk elsewhere and indeed would reduce overall flood risk by preserving, free of any impediments, the flood waters route from St. Martin's Drive to the river.
  - Site is within Aughrim town centre. It is 45m from Aughrim Bridge.
  - Mitigation measures proposed to deal with flooding.
  - Other areas zoned for residential use in Aughrim are located along the periphery.

- The principles of Sequential test should apply. Site is vacant and within the town centre, therefore should be preferred over other sites further removed from the centre.
- Planning Objective of using a derelict site which is fully serviced and close to town centre amenities and services.
- Development would improve the streetscape of this area by infilling this large undeveloped area which is unsuitable infill residential development and unsuited to other land uses.

## **7.2 Planning Authority Response**

The main points of the response are summarised below:

- Irish Water's role in the statutory process is as a Prescribed Body. Their role is to provide the Planning Authority with sufficient information in relation to wastewater and water supply services to allow it to make decisions on an application.
- Reference is made to Irish Water comments in the Report submitted on the Planning Application.
- It is the Planning Authority's understanding that the upgrade of the Aughrim Treatment plant to provide additional capacity is not included in any current Irish Water programme, nor has the design of such upgrade been prepared, nor have any lands required for such upgrade been purchased or within Irish Water's control. It is, therefore, the Planning Authority's opinion that, in the absence of any plan to upgrade the Aughrim Plant, it is not reasonable to consider the upgrade to be achievable within the lifetime of the permission.

## **7.3 Observations**

None

## **8.0 Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Wastewater treatment plant capacity
- Visual Impact
- Flooding
- Appropriate Assessment

### **8.1 Wastewater Treatment Plant Capacity**

8.1.1 The applicant disputes the reason for refusal based on the capacity of Aughrim Wastewater Treatment Plant. The applicant further refers to the Irish Water submission and the recommendation: No objection Class 1.

8.1.2 Irish Water in their submission noted that there is significant hydraulic overloading of the network. The treatment plant is both hydraulically and organically overloaded resulting in a major proportion of the effluent wastewater discharging untreated each day to the river.

8.1.3 Inland Fisheries Ireland highlighted in their detailed submission that the design capacity of the plant is 1200 population equivalent (PE) and at present is in non-compliance with the emissions limit as set out in the Discharge Licence for the Plant. The EPA Licence attached to the Plant refers to the need to upgrade it before December 2017.



8.1.4 I note that there are no immediate plans for the upgrading of the wastewater treatment plant and currently it does not have capacity to accommodate the demand from the proposed development.

8.1.5 I am satisfied that the wastewater treatment plant in Aughrim does not have capacity to cater for the proposed development. As there are no proposals for its upgrade a condition restricting the commencement of development until the plant is upgraded is not appropriate.

8.1.6 I consider, therefore, that the Planning Authority's first reason for refusal should be substantially upheld.

## **8.2 Visual Impact**

8.2.1 The main concerns raised refer to height and the visual impact of the proposed houses in relation to the established pattern of development in the area.

8.2.2 The site is highly visible on the southern approach to Aughrim village, especially on approach to Aughrim Bridge. Any development proposal, therefore, needs to be well considered in the context of the character of the area.

8.2.3 The design of the proposed houses is in keeping with the adjoining redevelopment of Sherridan's Public House site to the west of the site. The revised site layout plan indicates the proposed houses set back c. 2.5 metres from the established building line to the west. The design of the front elevations is considered acceptable. A redesign of the rear elevations to a storey and a half would be more appropriate due to the visibility of the site vis a vis the Aughrim River and the visual impact the development would have when viewed from the R753 to the north of the Aughrim River. Issues regarding the design of the rear elevation of the houses could be addressed by condition if the Board decided to grant permission.

- 8.2.4 No contiguous elevations have been submitted showing the relationship of the proposed development and adjoining properties.
- 8.2.5 In order to address flooding concerns it is proposed to raise the level of the houses. The ground level is 66.19 and proposed finished ground floor level is 67.50 which results in a ridge level of 74.15. (road level along the front of the site is 66.2). The application does not include specifics regarding the concrete wall and platform proposed to be built.
- 8.2.6 I am of the opinion that the railing on top of the wall along the boundary would detract from the aesthetics of the area and should be omitted. The existing wall is sufficient to provide the boundary treatment, especially along the southern boundary of the site (it is proposed to set this back and rebuild it). This could be dealt with by condition if the Board decided to grant permission.
- 8.2.7 I consider, therefore, that the Planning Authority's second reason for refusal should not be upheld.

### **8.3 Flooding**

- 8.3.1 While the main focus of the Planning Authority in the third reason for refusal is the Justification Test for lands identified as Flood Zone A. It also refers to the attractiveness of the scheme in concluding that the scheme is not "sufficiently justified" under the test. The later in my view is an inappropriate consideration in applying the Justification Test.
- 8.3.2 The applicant has argued that the site adheres to the justification test criteria and that by applying the sequential approach the use of a fully serviced site within the Town centre is more sustainable than directing development to the periphery of the town
- 8.3.3 There is provision in the guidelines under Section 3.5 for development of Flood Zone A sites where development of the site is open for consideration in exceptional circumstances such as town centre locations. In this instance

the proposal is for a small scale infill residential development on RE zoned lands in the town centre of Aughrim. I am, therefore, satisfied that it would be in accordance with Section 3.5 of the guidelines.

8.3.4 I am of the opinion that the development of 4 houses on an infill site on lands zoned RE in the County Development Plan where residential development is permitted in principle satisfies the Justification Test

8.3.5 As indicated previously, on foot of the recommendations in the Flood Risk Assessment, the applicant submitted proposals to raise the finished floor level of the houses and revised site layout plan for the site. The Flood Risk Assessment has recommended a number of mitigations measures which have been noted in section 2.0 of this Report. These have been examined and considered acceptable.

8.3.6 I consider, therefore, the Planning Authority's third reason for refusal should not be upheld.

#### **8.4 Appropriate Assessment:**

8.4.1 The closest Natura 2000 sites are Wicklow Mountains SAC (site code 002122) which is c. 12km north of Aughrim village and Kilpatrick Sandhills SAC (site code 001742) which is c. 18km southwest of the site.

8.4.2 Having regard to nature and small scale of the development within an established town centre and the nearest distance to the European sites, 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

#### **9.0 Recommendation**

I recommend that planning permission should be refused for the reason and considerations as set out below.

## **10.0 Reasons**

1. The site of the proposed development is located in the town of Aughrim and where the existing wastewater treatment plant is already over capacity. It is considered that the proposed development would be premature by reference to the existing deficiency in the provision of sewerage facilities and the period within which these constraints may reasonably be expected to cease. The proposed development, therefore, would be contrary to the proper planning and sustainable development of the area.

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Dáire McDevitt  
Planning Inspector

6<sup>th</sup> October 2016