



An
Bord
Pleanála

Inspector's Report PL11.248408

Development	Change of use from house to residential care unit, extension, demolition of shed and installation of wastewater treatment system.
Location	Rathbeag, Lea Road, Portarlinton, Co. Laois.
Planning Authority	Laois County Council.
Planning Authority Reg. Ref.	17/64.
Applicant(s)	Nua Healthcare Services.
Type of Application	Permission.
Planning Authority Decision	Refuse permission.
Type of Appeal	First Party.
Appellant(s)	Nua Healthcare Services.
Observer(s)	None.
Date of Site Inspection	11 th July 2017.
Inspector	Ciara Kellett.

1.0 Site Location and Description

- 1.1. The appeal site is located c.3.75km east of the centre of Portarlington, Co. Laois and c.5km west of Monasterevin, Co. Kildare. It is located on the southern side of the Lea Road (R420) leading into the town, c.1.8km from the development boundary of the town, in the 80kph speed zone. The general area surrounding the site is rural in nature, albeit there are a number of dwellings either side of the road leading into Portarlington.
- 1.2. The site is c.250m west of the junction of the R420 and the R424. Fields in agricultural use lie to the east. A dwelling lies to the west and the number of one-off dwellings along the road increase towards the town.
- 1.3. The site is stated as being 1.12Ha. A bungalow of 293sq.m exists on the site already which is used for residential care. It currently operates as a residence for up to 4 persons and 2 persons providing care. There are 5 no. car parking spaces, an existing waste water treatment plant and 2 no. soakaways, and the dwelling is connected to public water mains. Mature hedgerow exists between it and the dwelling to the west.
- 1.4. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. The proposed development is for the change of use of the dwelling to a residential care unit. The change of use permission is required as the proposed development will exceed the conditions and limitations of Class 14(f) of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended. Class 14(f) provides an exemption for a change of use of a house, to use as residence for persons with an intellectual or physical disability or mental illness, not exceeding 6 persons and 2 carers. It is proposed to provide 9 no. bed spaces which will accommodate up to a maximum of 7 no. resident service users and 2 resident carers overnight, with approximately 5 no. full time day care staff who typically work 12-14 hour shifts in addition to a team leader.
- 2.2. A single storey extension to the bungalow of 235sq.m to accommodate the additional bedrooms is requested. This will bring the overall area of the unit to 528sq.m. It is

proposed to demolish a shed and install a new wastewater treatment system. The proposed development results in an additional 3 no. bed spaces in 3 no. individual apartments.

- 2.3. The proposed development will function as one planning unit with one care team and will be registered with HIQA. 10 no. new car parking spaces are proposed on top of the 5 no. existing spaces.
- 2.4. The application was accompanied by drawings and a Site Suitability Assessment.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for four reasons. The reasons are summarised as follows:

1. The site is located in an unserviced rural area, characterised by one-off houses and farmsteads, remote from settlements and conflicts with the objectives of the settlement strategy of the Laois Development Plan, in that it undermines the direction and focussing of growth in urban areas and would contravene stated policies.
2. Footpaths, public lighting, shops, social or community services are not available in the vicinity, and it is considered it contravenes policy S15/P20 of the Laois Development Plan.
3. Proposal contravenes policy TT10/P34 which prohibits unnecessary access onto strategic roads, and would contravene policy TT10/P39 because it would contribute to premature obsolescence of regional roads through creating excessive levels of individual entrances.
4. In the absence of confirmation that ground conditions on site, and the design of the proposed effluent treatment system comply with the EPA Wastewater Treatment Manual for small business etc., the Planning Authority cannot be satisfied that the proposal will not pose a threat to groundwater and would be prejudicial to public health.

3.2. Planning Authority Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Notes current use of building avails of exemption provided for by Class 14(f), and that proposal could potentially cater for 7 service users (4 existing, 3 proposed) as well as 2 carers and 6 additional staff during peak.
- States that applicant has not provided a justification as to why this particular service has to be located in this particular rural unserved location, or what other locations were considered. Considers applicant has only stated that the individuals using the site suffer from conditions which lead to difficulties with social interaction and anxiety issues, allowing service users to balance the requirements of a quiet environment while preventing over isolation.
- Considers proposal conflicts with Core Strategy Objectives and Settlement Strategy in that it undermines the direction and focussing of growth into urban areas.
- Considers required level of services to accommodate the proposed development such as footpaths and public lighting are not available and contravenes policy S15/P20.
- Proposal intensifies use of an existing entrance onto R420 road and contravenes policy TT10/P34 which prohibits unnecessary access onto strategic routes.
- Development contravenes policy TT10/P35 as the applicants are not farmers and have not demonstrated that they derive a substantial portion of their income from the land.
- Contravenes policy TT10/P39 as it contributes to premature obsolescence of regional roads through creating excessive levels of individual entrances.
- Applicant should have demonstrated compliance with the EPA Wastewater Treatment Manual, Treatment Systems for Small Communities, Business, Leisure Centres and Hotels as there are a total of 9 bedrooms which has a potential PE of 18 plus loading by day staff and visitors. Planning Authority

cannot be satisfied that the proposal will not pose a threat to groundwater in the area.

- Satisfied with the design and scale of extension.
- Notes Road Design Office requested a number of items be submitted by way of Further Information if the proposal was not being refused permission.
- Recommends permission is refused.

The decision was in accordance with the Planner's recommendation.

3.2.1. Other Technical Reports

- **Waste Enforcement/Environment:** No objection subject to conditions.
- **CFO:** Fire Certificate will be required.
- **Road Design Office:** Recommends that additional information be submitted in relation to achievement of 180 metres sightlines from entrance, submission of stormwater calculations, information on turning movements, details of lighting, submission of a Stage 1 Road Safety Audit and carrying out a traffic impact assessment.

3.3. Prescribed Bodies

- **Irish Water:** No objection.
- **Inland Fisheries Ireland:** No objection subject to conditions.

3.4. Third Party Observations

- None.

4.0 Planning History

- **Reg. Ref. 10/05:** Section 5 declaration issued in November 2014 concluding that the use of the premises as a supported living dwelling for up to 6 persons constitutes exempted development.
- **Reg. Ref. 07/567:** Permission refused in December 2007 for the demolition of the existing nursing home building and the construction of a new 40 no. bed

nursing home, 6 no. independent living units. Permission refused for 4 reasons including lack of sightlines, traffic hazard, undesirable precedence and unacceptable risk to groundwater.

- **Reg. Ref. 06/894:** Permission refused in August 2006 for the demolition of the existing nursing home building and the construction of a new 40 no. bed nursing home, 6 no. independent living units.
- **Reg. Ref. 01/519:** Permission granted in June 2002 for the retention of a dwelling house and septic tank.
- **Reg. Ref. 87/195:** Permission granted for a Nursing Home (172sq.m).

5.0 Policy Context

5.1. Laois County Development Plan 2011 - 2017

Chapter 3 of the Plan refers to the Development Plan Strategy, Chapter 4 refers to the Housing Strategy, Chapter 5 to Social Infrastructure, Chapter 10 to Transport, and Chapter 15 to General Location and Pattern of Development.

Chapter 3 notes that the core aim is to provide for the sustainable growth of County Laois towards a population of up to 77,059 by 2018, distributed in line with the settlement strategy as indicated in the Midland Regional Planning Guidelines. Portllington is noted as a Key Service Town with Portlaoise being the Principal Town.

Policies include **DPS3/PO7**:

Meet the needs of those who reside in rural areas by virtue of employment or essential social reasons

Section 4.7 of Chapter 4 refers to People with Disabilities.

Policies include **HS4/P37**:

Provide for the housing needs of those with disabilities through the provision or adaption of appropriate accommodation

Section 5.5 of Chapter 5 refers to Health Care Facilities.

Policy **S15/P18** states:

Co-operate with the Health Service Executive and other statutory and voluntary agencies in the provision of appropriate health care facilities covering the full spectrum of such care from hospitals to the provision of community based care facilities subject to proper Planning considerations and the principles of sustainable development

Policy **S15/P19** states:

Ensure that adequate lands and services are available for the improvement, establishment and expansion of health services. Ensure that adequate services such as water supply or wastewater treatment are in place prior to development taking place

Policy **S15/P20** states:

Encourage the integration of healthcare facilities within new and existing communities and to discourage proposals that would cause unnecessary isolation or other access difficulties, particularly for the disabled, the elderly and children

Policy **S15/P22** states:

Encourage nursing homes and sheltered housing accommodation to be located within settlements to provide for easy access both for staff and visitors in order to enhance overall quality of life, increase their links with, and accessibility to, local amenities and to adopt a presumption against rural locations

Chapter 10 refers to Transport. Table 19 identifies the R420 as a Strategic Regional Route in the county.

Policy **TT10 /P34** states:

Prohibit unnecessary access onto strategic regional routes in areas where the maximum speed limit applies

TT10/P39 states:

Avoid premature obsolescence of Regional Roads through creating excessive levels of individual entrances

5.2. Draft Laois County Development Plan 2017 - 2023

The Draft Laois County Development Plan 2017 – 2023 is currently at Material Amendments stage. The proposed material amendments were on display from 7th April 2017 until 5th May 2017.

Portarlinton continues to be a Key Service Town. Section 3 refers to Housing Policy, Section 4 to Social, Community and Recreational Strategy.

In Section 3, policy **HP4** States:

Provision of social and specialist housing shall be progressed through partnership working with voluntary and co-operative housing organisations, the Health Service Executive, as well as through agreements with private developers;

Policy **HP11** states:

Provide for the housing needs of those with disabilities through the provision or adaptation of appropriate accommodation.

Policies in relation to the provision of Health Care have not materially changed.

5.3. Natural Heritage Designations

The River Barrow and River Nore SAC (Site Code 002162) is located c.1km to the north of the site.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been lodged on behalf of the applicant against the decision of the planning authority to refuse permission. In summary it states:

- Background and history of Nua Healthcare services included. Indicates that applicant provides care for individuals with intellectual disabilities and autism and people with acquired brain injuries. It is stated that individuals who are exhibiting anti-social behaviour cannot be adequately managed within an urban/town centre environment, and in this context Nua Healthcare seek out

secure, private properties in semi-rural, low arousal environments within a reasonable distance of local amenities, c. 5km from a town or village.

- Consider that in relation to reason no.1 and no.2 for refusal, little regard was paid to the planning status of the property as an originally permitted nursing home, and as an authorised residential care home for up to 6 residents.
- Consider it critical that the proposal will result in a total of 7 residents – just one more than the 6 resident limit set by Class 14(f). The number of resident carers will remain as 2. Consider it is the number of resident carers, as opposed to the number of staff, that is the relevant consideration.
- Consider that the Planning Authority misunderstood the nature and extent of the proposed development in arriving at the first two reasons for refusal.
- Notes that the applicant provides specialist care for adults and children with intellectual disability, brain acquired injuries and mental health difficulties who cannot be adequately managed within an urban/town environment. The applicant is already authorised to provide these services at the subject site – this fact negates the need to justify the location of the proposed development.
- Policy HS4/P37 supports the provision of residential care homes for those with such disabilities. Policy S15/P20 cited in the second reason for refusal is not relevant in this instance.
- Reference made to another application, Reg. Ref. 09/654, for development of 6 no. timber cabins and a change of use of a dwelling to a residential care facility in Mountmellick, which is located outside the town and the Planner's Report therein. Planner has regard to the needs of the people (Asperger Syndrome, High Functioning Autism, Intellectual disabilities) to which the facility was proposed to cater for and recommended permission was granted.
- Request the Board to set aside reasons no.1 and 2 as they fail to have regard to the existing authorised use and failed to have regard to the nature and requirements of the specialised care which demands more secluded location than policy S15/P20 would promote.
- With respect to third reason, note that the proposed development has the benefit of an existing access onto the R420. No additional access is

proposed. Consider that the proposal will only result in a minor increase in occupancy and staffing levels over the existing care home.

- Note the Roads Design office recommended Further Information on matters of detail and consider they could be dealt with by way of condition.
- Note 10 car parking spaces are proposed to facilitate staff parking, visitors, clinical staff etc. A maximum of 7 no. staff vehicles will be parked during the day of which 2-3 remain at night. There is sufficient space on site for this parking, however parking proposed can be reduced to Development Plan standards of 1 space per 2 bedrooms should the Board be minded to grant permission.
- With respect to fourth reason for refusal, the Site Assessor has verified that the Site Characterisation Form completed complies with the EPA Wastewater Manual, Treatment Systems for Small Communities, Business, Leisure Centres and Hotels and the EPA Code of Practice for Domestic Houses.
- Draw attention to the fact that neither the Environment nor the Eastern Area Office of the Council raised concerns as to the propriety of the proposed system – the Environment Department confirmed it had no issue with it, nor did Irish Water or Inlands Fisheries Ireland as evidenced by their submission on file.
- Consider that the Planning Authority misunderstood the nature of the proposal by suggesting that it has the potential to accommodate a population of 18+ persons.
- Concludes by stating that it is their view that the Planning Authority refused permission on first principles as if the proposed development were an entirely new development and not an extension to an existing authorised use. The reasons for refusal do not stack up.
- The proposal would not adversely impact on the amenities of the area, would not give rise to traffic hazard, would not pose a threat to groundwater or be prejudicial to public health.

6.2. **Planning Authority Response**

The Planning Authority have not responded to the appeal.

7.0 **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:

- Principle of Development
- Traffic Hazard
- Wastewater Treatment
- Appropriate Assessment

7.1. **Principle of Development**

The Planning Authority consider that the proposal conflicts with the Core Strategy Objectives of the Laois County Development Plan, in that it undermines the direction and focussing of growth and investment into urban areas. Reason no.2 referred to policy S15/P20 which encourages the integration of healthcare facilities within new and existing communities to discourage proposals which would cause unnecessary isolation. I consider these policies to be reasonable however, other policies exist in the Laois County Development Plan which need to be considered with respect to the subject proposal, including Policy DPS3/PO7 and HS4/P37.

Policy DPS3/PO7 refers to the Council meeting the needs of those who reside in rural areas by virtue of employment or essential social reasons, and HS4/P37 provides for the housing needs of those with disabilities through the provision of appropriate accommodation.

I consider that the applicant has adequately explained why this particular facility needs to be located in a semi-rural environment and consider that it complies with DPS3/PO7 by virtue of meeting social reasons of the occupiers.

I also consider of key importance is the reference in HS4/P37 to providing for *appropriate* accommodation. The applicant has explained that the individuals who reside in the subject facility are individuals who are exhibiting anti-social behaviour, and cannot be adequately managed within an urban/town centre environment and require secure, private properties in semi-rural, low arousal environments within a reasonable distance of local amenities. I consider that this development c.1.8km from the edge of Portarlinton town meets the needs of the occupants as detailed by the applicant, and is provision of appropriate accommodation in this instance.

The applicant has stated that the facility currently operates as a Residential Care Unit within the conditions and limitations of the exemption provided for in the Planning and Development Regulations. It is stated that there are currently 4 residents and that they intend to increase the number to 7 which is one more than the Regulations provide an exemption for. I note that there has been no objection from near neighbours to the subject proposal, and conclude that an additional resident over and above the exemption allowance would not cause serious injury to amenities.

In conclusion, I consider that the principle of development is acceptable in this case. I consider that it complies with policy HS4/P37 of the current Plan, and HP11 of the Draft County Plan, to provide for appropriate accommodation. I am satisfied that the nature and requirements of the specialised care demands a more secluded location than policy S15/P20 would promote.

7.2. Traffic Hazard

Reason no.3 of the refusal referred to traffic reasons, in particular policies TT10/P34 and TT10/P39. Policy TT10/P34 prohibits unnecessary access onto strategic regional routes and TT10/P39 seeks to avoid the premature obsolescence of the regional road through creating excessive levels of individual entrances.

There is no plan to add a new entrance onto the R420. Therefore, I do not consider that the proposal would contravene TT10/P39 which seeks to avoid excessive levels of entrances.

Policy TT10/P34 seeks to prohibit unnecessary access onto strategic regional routes in areas where the maximum speed limit applies. The applicant states that the

extension of the facility will result in a minor increase in occupancy and staffing levels.

I note that the Roads Design office sought Further Information in terms of sightlines and a Stage 1 RSA etc. The applicant indicates that sightlines of 160m are available and other items could be dealt with by way of condition.

The applicant stated that the level of car parking can be reduced to the Development Plan standards of 1 space per 2 bedrooms. This is presumed to refer to the Nursing Home standards. I note that the Development Plan requires that Hospitals provide for 1 space per bed and Clinic and Group Medical Practices 2 spaces per practitioner.

During my site visit it was clear that additional parking takes place within the development outside of the designated spaces. Having regard to the requirement for parking as stated in the appeal, and having regard to the Development Plan standards which do not specifically refer to Residential Units such as this, I consider that the addition of 10 spaces is acceptable in this instance, and will provide for orderly parking. The applicant notes that 7 staff are present during the day of which 2-3 remain at night. With visitors, clinical staff etc. I consider the request reasonable.

In conclusion, I do not consider that the proposal will be in conflict with policy TT10/34 or TT10/P39. The proposal will not result in a new entrance onto the R420 and will not result in unnecessary access onto strategic regional routes.

7.3. Wastewater Treatment

The fourth reason for refusal referred to the absence of confirmation that the ground conditions and the design specification of the proposed effluent treatment system would not pose a threat to groundwater or be prejudicial to public health.

The applicant confirmed that the proposed system is compliant with the EPA Wastewater Treatment Manual for small business etc. It is noted that neither the Environment Department nor Inland Fisheries Ireland expressed concerns with the proposal and IFI included recommended conditions.

Having regard to the Site Characterisation Form, I note that the polishing filter design is based on 7 service users at 350 litres/day and 9 staff at 60 litres/day and suitable

for a PE loading of 20. I am satisfied with the information provided on file that the proposed wastewater treatment system is acceptable.

7.4. Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the established residential care use of the lands, the planning history of the site, and the pattern of development in the vicinity, it is considered that, subject to compliance with the following conditions, the proposed development would be acceptable in relation to the amenity of the area and of property in the vicinity and would not be prejudicial to public health, and will generally be acceptable in terms of traffic safety and convenience.

Furthermore, the Board is satisfied that based on the information contained on file that the applicant has adequately demonstrated a need to locate in a rural environment because of the nature of the care required at this facility.

The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.

Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The development hereby permitted shall only be occupied by persons with disabilities and their carers, and for no other purpose, without a prior grant of planning permission for change of use.

Reason: In the interest of residential amenity and to limit the scope of the proposed development to that for which the application was made.

3. The car parking arrangements including provision for cycle parking, circulation and turning bays shall be laid out and comply with the detailed standards of the planning authority for such works.

Reason: In the interest of orderly development and convenience

4. Details of the materials, colours and textures of all the external finishes to the proposed extension shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, to include use of indigenous species and screen planting along the boundaries, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual and residential amenity.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document entitled "Wastewater Treatment Manuals - Treatment Systems for Small Communities, Business, Leisure Centres and Hotels " – Environmental Protection Agency, 1999. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Within three months of the first occupation of the extension, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details, and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

8. Site development and building works shall be carried out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to

any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Ciara Kellett
Inspectorate

19th July 2017