



An
Bord
Pleanála

Inspector's Report PL12.249151

Development	Renovation of existing derelict cottage as holiday home and for the construction of an on-site waste water treatment system with percolation area.
Location	Derrymacoffin, Fenagh, Co. Leitrim.
Planning Authority	Leitrim County Council
Planning Authority Reg. Ref.	P16/236
Applicant(s)	Michael Egan
Type of Application	Outline Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Michael Egan
Observer(s)	None
Date of Site Inspection	2 nd November 2017
Inspector	Una O'Neill

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1.0 Site Location and Description

- 1.1. The appeal site is located within the townland of Derrymacoffin in Co. Leitrim, south off the R208 between Ballinamore and Drumshanbo, adjoining St. Johns Lough, which is part of the Shannon Erne Waterway. The site is accessed along an access road/laneway and is situated approx. 1.2km from its junction with the R208 at Ballyduff bridge. On the opposite side of the junction with the R208 is an entrance to Lock 7 of the Canal, where there is a riverside walk and parking area near the Lock. The area is of scenic rural value.
- 1.2. The access road/laneway to the site is wide and well used for the first approx. 120m, where it serves two dwellings, and then becomes narrow and overgrown with a poor alignment. An unoccupied cottage is located approx. 300m east of the site and the site itself is a further 200m west over a bridge over the interconnected loughs. There is a cattle grid and gate at the entrance to the site. The access road appears to continue on past the site.
- 1.3. The site is 1.31ha in area and mostly lies south of the laneway, with the northern boundary adjoining St. John's Lough. The existing derelict stone cottage, stated to be 110sqm in area, and outbuilding are located to the western side of the site, approx. 19m from the laneway. The boundary to the cottage alongside the laneway comprises a low stone wall with overgrown brambles, and an adjoining paddock is enclosed by a stone wall and trees/hedgerow. The site is relatively flat and was observed on site inspection to be damp underfoot with rushes south of the cottage. On the other side of the laneway is the adjoining lough.

2.0 Proposed Development

- 2.1. The proposed development is for OUTLINE permission consisting of the renovation of an existing derelict cottage for use as a holiday home and for the construction of an on-site waste water treatment system with percolation area. The existing entrance is to be adapted for vehicular use.

3.0 Planning Authority Decision

3.1. Decision

REFUSED for following reason:

Having regard to the inadequate sight distance particularly in a westerly direction at the junction of the access road with the Regional Road R208 and the layout of the said junction, it is considered that the intensification of use arising from the proposed development would endanger public safety by reason of a traffic hazard.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer's report generally reflects the decision of the Planning Authority. I note further information was requested in relation to road safety matters, requirement for AA Screening, and clarification on the proposed use of the property as a holiday home.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

9814175 – Outline permission GRANTED to Stephen Conway for single storey dwelling on appeal site subject to satisfactory layout and design. Plans showed dwelling in area of proposed dwelling.

041328– Permission REFUSED to Olive Conway for dwelling to the west of the appeal site, on the grounds of Traffic Hazard, Visual Amenity and Water Pollution.

PL12.210529 (reg ref P04746) – Permission REFUSED to Niall Fleming to construct a dwelling house with sewage treatment system and mooring jetty on the appeal site for reasons related to visual amenity and sensitive location in proximity to St. John’s Lough, development would be out of character and a visually discordant feature in the landscape and would seriously injure the visual amenities and undermine the rural character and landscape quality of the area. Also a lack of information that the site can be drained satisfactorily notwithstanding the proposed use of a reed bed system.

5.0 Policy Context

5.1. Leitrim County Development Plan 2015-2021

- Section 2.1.3: Urban and Rural Settlement Strategy
- Section 3.2.3: Area designated as of High Visual Amenity
- Section 4.2: Urban and Rural Settlement Policies
- Map 4.3 Area of Medium Capacity for Housing.
- Leitrim, in terms of NSS rural area classification, is considered a ‘structurally weak rural area’.
- Section 5.5.8 of the Leitrim County Development Plan sets out requirements for access onto public road and sightlines.
- The R208 from junction of the R280, to Junction of R202 is defined as a regionally important route.

5.2. Natural Heritage Designations

The site is not located within or adjacent to a Natura 2000 site.

Cuilcagh - Anierin Uplands SAC is located approx. 16km northeast of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

The applicant has raised the following issues in the grounds of appeal:

- The use of the house as a dwelling has not been abandoned. Planning authority erred both in fact and in law in this regard.
- It is the applicant's intention to make the dwelling habitable in accordance with section 4(1)(h) and the purpose of the outline application is to cover the future replacement of the roof and for the provision of a wastewater system and sanitary facilities.
- Reference is made to the definitions in the Planning and Development Act 2000 (as amended) relating to house, habitable house, and application of section 4(1)(h). Caveats do not apply to section 4(1)(h) or the exemptions within the Planning and Development Regulations that the house has to be habitable.
- The applicant refers to the planning authority's reference to the Tallaght Block Company case in relation to abandonment of use. While 'a factual cessation of activity' is evident, there is no evidence of 'an intention not to resume the activity'. It is the applicant's contention that the established use is that of a house/dwelling and to render it habitable does not require any consent from the planning authority (section 4(1)(h)).
- The Planner's Report refers to the outline applications for the development of a new dwelling as evidence of an intention to abandon the use of the structure as a dwelling. The applications were an attempt to optimise the use of the property from the landowners perspective in the hope of improving his economic permission. Outline permission only was applied for.
- This outline application seeks to obtain an indication from the planning authority that it is amenable to the provision of a waste water disposal system and works to the house beyond the scope of section 4(1)(h).
- Reference in the Planner's Report to a file ref RL3352 is not applicable to this case.

- Traffic hazard was not used as a reason for refusal by An Bord Pleanála previously for the development of a new house and jetty at this location.
- An existing junction already serves the site and an existing house, therefore intensification of use does not apply.
- The access road provides uninhibited access, crossing the Ballinamore/Ballyconnell canal as far as the applicant site, where it is currently gated (unlocked). It continues as a right of way beyond the site, to service other lands. While it is narrow, it is adequate for the low levels of traffic using the road.
- The applicant accepts that the sightlines available are limited and do not meet standards.
- The applicant suggests that as no roads report accompanied the planning assessment, that the roads department has no issue with the proposal.
- The Planning Authority is seeking to deny the established rights to use the junction of the Access Road and the Regional Road R208 to serve the long established house on this site, on unfounded grounds that the use has been abandoned because it is not currently habitable.
- It is the applicant's intention to use the house as a holiday home for maximum 60-90 days a year. It is noted that as a landowner the applicant has a legal right to visit the site and if grazing animals would need to visit it daily.

6.2. Planning Authority Response

- The Planning Authority has been consistent in its opinion that the intensification of the junction of the access road with the regional road R208 is considered to endanger public safety by reason of traffic hazard.
- The junction is opposite the road that leads down to Lock 7 on the Canal. As it passes the junction the regional road is rising from west to east and there is a solid white line down the centre of the road. Fast moving traffic was observed on the road. Visibility to the east is restricted by a hedgerow bounding the adjoining field as well as the rising level of the road. To the west visibility is restricted by a bend in the road to the east of Ballyduff Bridge. One has to

enter the opposite carriageway on the regional road in order to achieve an angle, when arising from the junction and turning left and travelling away from Ballinamore.

- A report from the area engineer now accompanies the response. It is noted that staffing shortage resulted in the lack of a previous report for the file. The report states the roads department opinion remains the same as that under P04/746, which raised concerns in relation to road safety at the access point to the site from the laneway and at the junction of the laneway with the regional road R208.
- The planning authority remain of the opinion that the structure is derelict, as per the description of development. It is the Planning Authority's contention that the use has been abandoned.
- Section 4(1)(h) can allow certain works to the dwelling, but it only applies to the structure, not to the use.
- The applicant has described the dwelling as derelict and stated that it has become 'run down...and lain fallow for a significant number of years'. The exact period between the last use of the dwelling for some form of residential use has not been declared by the applicant, but it is evident from a visual inspection that this could be in excess of 20 years or so.
- There is no evidence of a septic tank associated with this dwelling previously, or similar or other modern conveniences.
- Under a previous application on this site, P04/747, the property is described as a derelict house and outbuildings. The curtilage of the property was not separated from these buildings.
- Other than the corrugated roof, the structure is in a seriously dilapidated state. There has been no attempt in recent years to cordon off the site from roaming animals, donkeys were observed on the site, no attempt to repair boundaries or gates, no attempt to damp proof or keep dry the stone, and no attempt to clear vegetation.
- The Planning Authority is of the opinion that the matter of intensification of use remains relevant. This dwelling has not been occupied in recent years and

under recent driving and road conditions, and does not enjoy the benefit of an existing vehicular access to an existing residential use of a structure. The reinstatement of the structure as a dwelling would result in intensification of use of the existing junction, which would endanger safety by reason of traffic hazard.

- The applicant is not the owner. The applicant has the option to purchase subject to planning.

6.3. Observations

None.

7.0 Assessment

- 7.1. The Leitrim County Council Planner's Report states that the issue of design does not arise as this is an application for Outline Permission. The primary issues addressed in the report relate to traffic hazard arising from intensification of use on the site, which comprises a derelict structure the use of which has been abandoned.
- 7.2. The grounds of appeal argue that the use on the site has not been abandoned, no intensification of the exit onto the R208 can therefore be claimed, and the exit is not considered to give rise to an additional traffic hazard. The site is served by this existing exit at present.
- 7.3. I consider the primary issues for assessment relate to the existing use, traffic hazard and waste water treatment.

Existing Use

- 7.4. The applicant in the grounds of appeal argues that the dwelling is an existing use and therefore intensification of the site entrance onto the R208 is not an issue. The applicant does not consider the existing use to be abandoned. Section 4(1)(h) applies to the existing dwelling, which can be rendered habitable under existing exemption provisions.
- 7.5. The Planning Authority argues the dwelling is derelict, as stated in the site notice, and that the use is abandoned. Section 4(1)(h) does not apply to uses. Reference is made to the Planning and Development Act 2000 (as amended) which states that a

habitable house is a house which ‘... is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict...’.

- 7.6. Section 4.2.3 of the Leitrim County Development Plan 2015-2021 states that the refurbishment of derelict or abandoned buildings in the countryside will be particularly favoured. It is also stated that development must avoid pollution of surface and ground waters and development must avoid creating a traffic hazard.
- 7.7. From site inspection and from the information submitted, including the lack of any evidence of the previous existence of a wastewater treatment system and timeline of when the dwelling was in previous use, I am of the view that the dwelling in question is derelict, as stated in the site notice, has not been occupied for a considerable period of time and is not a habitable dwelling as per the definition within the Planning and Development Act 2000 (as amended).
- 7.8. Whether or not the use was abandoned is a separate matter and is not directly relevant to the current case.

Traffic Hazard

- 7.9. The applicant in the grounds of appeal argues that there is no intensification of the existing entrance to the site from the R208 as a dwelling has existed at this location. While the sight lines are substandard, this is an existing junction serving an existing plot/previously habitable house.
- 7.10. The Planning Authority considers the proposed house represents an intensification of this entrance from the R208, which is substandard and would result in a traffic hazard.
- 7.11. Leitrim County Development Plan 2015-2021 requires sight lines of 160m on regionally important road where the speed limit is 80km per hour. Where the speed limit is 100km per hour, sight lines of 215m are required. The speed limit on this road is at least 80km per hour. The Planner’s Report states the sight distance available in an easterly direction is 116m and in a westerly direction is 80m, which is substandard. The vertical and horizontal alignment are poor. There is also an access point from Lock 7 onto the Regional Road opposite the junction and there is a solid white line down the centre of the road.

7.12. Upon site inspection, I noted the poor vertical and horizontal alignment of the road and substandard sight lines. Upon exiting the access road and turning left, one has to enter the opposite carriageway on the regional road in order to achieve an angle to make the turn. While the development plan supports refurbishment of derelict or abandoned buildings, it states that development must avoid creating a traffic hazard. The proposed dwelling, which is derelict and has not been in use for a considerable number of years, would in my view result in an intensification of the junction and result in a traffic hazard.

Wastewater Treatment System

7.13. The Planner's Report states that there is no evidence that an existing wastewater treatment system exists on the site. It is proposed to provide a new waste water treatment system.

7.14. The applicant proposes a packaged wastewater treatment system and sand polishing filter. The accompanying site suitability assessment indicates the site is over a Regionally Important Karstified Aquifer (Rk), with vulnerability classified as Extreme. The bedrock type is Dinantian Pure Bedded Limestone. The soil type is clay, with mottling at 1.1m and water table at 1.4m. The EPA Code of Practice (CoP) indicates that the site falls within the R2(2) response category where for a secondary treatment system a minimum thickness of 0.3m unsaturated soil/subsoil with P/T values from 3-75, in addition to polishing filter depth of 0.9m, ie 1.2m in total for a soil polishing filter. The T-test was undertaken, in accordance with the CoP Annex C. As the initial time for drop between 400mm and 300mm was greater than 210mins, a modified test was undertaken, given slow percolation characteristics of the soil. The T test value was 80. T values between 75 and 90 indicate soil is unsuitable for polishing filter at the depth of the T test and a P Test is required. The P test value was 65. P test values of between 3 and 75 indicate the site is suitable for a secondary treatment system with polishing filter at ground surface or overground.

7.15. The site characterisation report recommends a sand polishing filter. The base of the polishing filter is to be installed at ground level. The sand filter is to be 12.5sqm and sit on 300mm bed of washed 20mm gravel and 150sqm in area. It is stated that given the site layout all of the required EPA separations cannot be met. I note from the site layout plan that the distance from the treatment system and percolation area

is greater than 50m from a lake or foreshore as per the EPA guidance. The treatment system is approx. 19m from the dwelling. The percolation area is approx. 10.5m from the treatment system and overall the percolation area is 30m from the dwelling. The percolation area is 42.91m to a bored well.

- 7.16. From site inspection, I noted a proliferation of rushes, indicating wet ground conditions. In addition, the ground was significantly trampled in sections from the donkeys on site. Given the proximity of the site to St. Johns Lake and site vulnerability classification of Extreme over a Regionally Important Karstified Aquifer, with mottling at 1.1m and water table at 1.4m, it is clear that the ground conditions are not ideal, as noted in the high T and P values and the level of treatment required with proposal for a 300mm bed of gravel to be installed at ground level over the clay soil. I note that the proposed use of the dwelling is for a holiday home, which may result in issues in relation to the functioning of the system given its proposed intermittent use. Furthermore given the vulnerability of groundwater in this area, I am not satisfied that significant rain events would not result in ponding/lateral run off from the clay level. Overall, I am not satisfied that the proposed wastewater treatment system can satisfactorily address wastewater from this site.

Appropriate Assessment

- 7.17. The applicant has submitted a Natura Impact Screening for Appropriate Assessment, which notes the nearest Natura 2000 site is Cuilcagh-Anierin Uplands SAC, approx. 16km northeast of the appeal site. The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive: Oligotrophic to Mesotrophic Standing Waters, Dystrophic Lakes, Wet Heath, Dry Heath, Species-rich Nardus Grassland, Blanket Bogs and Siliceous Rocky Slopes. The Conservation Objective for the Cuilcagh – Anierin Uplands SAC is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
- 7.18. Having regard to the nature of the proposed development of a single dwelling and on-site treatment system and the distance between the appeal site and the Natura site i.e. 16km and uphill of the appeal site with no hydrological or hydrogeological connection, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Cuilcagh-Anierin

Uplands SAC, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

- 8.1. It is recommended that outline permission for development consisting of the renovation of existing derelict cottage as holiday home and on-site wastewater treatment system be refused for the reason set out hereunder.

9.0 Reasons and Considerations

1. It is considered that the proposed development would endanger public safety by reason of a traffic hazard because of the additional traffic turning movements the development would generate onto the R208 road where sightlines are restricted, particularly in a westerly direction. The proposed development, would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the soil conditions and high water table, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated or disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

Una O'Neill
Senior Planning Inspector

7th December 2017