



An
Bord
Pleanála

Inspector's Report ABP-301432-18

Development	Permission for alterations & renovations to existing house.
Location	1, St. Ronan's Villas, Dromiskin, County Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	17/566
Applicant(s)	MWAC Property Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	MWAC Property Ltd.
Observer(s)	None
Date of Site Inspection	3 rd August 2018
Inspector	Karla Mc Bride

1.0 Site Location and Description

- 1.1. The appeal site is located in Dromiskin Village in County Louth and the surrounding area is residential in character. The site comprises a detached dormer house that forms part of the St. Ronan's Villas housing estate. The site is bounded to the E by the main road with 2-storey houses beyond, to the N by a detached 2-storey house, and to S and W by detached dormer houses that form part of St. Ronan's Villas.
- 1.2. The main road slopes down from S to N and the appeal site, along with the neighbouring site to the S at no.2 St. Ronan's Villas, are located at a lower level than the road and the neighbouring sites to the N and S. Both houses are vacant and derelict, and the appeal premises has been damaged by fire and the roof is partially missing. The site is overgrown surrounded by a security fence.
- 1.3. Maps and photographs in Appendix 1 describe the site and surroundings in detail.

2.0 Proposed Development

The applicant is seeking planning permission to carry out alterations and renovations to the existing house on the c.0.0762ha site which would comprise:

- The FFL of the house would be raised by c.0.6m from 8.675m to 9.275m.
- The FRL would be raised from c.7.3m to 7.5m.
- The GFA floor area would remain as c.146sq.m.
- The gable front and hipped roof would be replaced by a standard gable and pitched roof with dormer windows.

Accompanying documents:

- Flood Risk Assessment report (FI)
- Surface Water Flooding report (FI)

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of Further Information in relation to a Flood Risk Assessment report and Landscape Plan the planning authority decided to refuse permission for 1 reason related to:

Material contravention of Policy ENV 33 as the site is located within an area which is at a risk of flooding and if permitted would introduce a number of people into that flood risk area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer recommended that planning permission be refused.

3.2.2. Other Technical Reports

Infrastructure: First report referred to a previous proposal for a new house on the site which was refused under PL15.235132 for flood related reasons and prematurity as no works to address the surface water drainage deficiencies had taken place. FRA submitted by way of FI. Second report recommended refusal of permission for one reason related to prematurity in relation to surface water drainage works.

3.3. Prescribed Bodies

No submissions.

3.4. Third Party Observations

One submission received from Ray Mc Parland who lives at no. 17 St. Ronan's Villas, directly to the rear (W) of the appeal site. The submission raised concerns in relation to the similarity to the previously refused development, no change to existing sewer which struggles with rainfall, no proposals to address surface water flooding, and adjacent house (to S) is also derelict due to flooding.

4.0 Planning History

Reg. Ref. DS115: The property is the subject of a Derelict Site Notice.

PL15.235132: Permission refused in 2010 for the demolition and replacement of the existing derelict house with alterations to foul sewer pipe that traverses the site.

The subject site is prone to flooding, which is related to surface water drainage deficiencies in this part of Dromiskin. It is considered that the proposed development fails to address the underlying cause of the flooding, and that the proposal to alleviate flooding on this site in isolation (by raising ground levels on the site) increases the risk of displacing flooding onto adjacent areas, thereby exacerbating the flooding problem elsewhere. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

The Board noted the detailed response of the applicant's agent in relation to the underlying causes of flooding in the area, and considered that these should be addressed in conjunction with the planning authority.

5.0 Policy Context

5.1. Flood Risk Management Guidelines for Planning Authorities 2009

The Guidelines seeks to avoid inappropriate development in areas at risk of flooding, avoid new developments increasing flood risk elsewhere (including that which may arise from surface water run-off) and ensure effective management of residual risks for development permitted in floodplains. The Guidelines seek to contribute to the avoidance or minimisation of potential flood risk through a more systematic and sequential approach within a river catchment context. Risk should be avoided where possible, less vulnerable uses should be substituted where avoidance is not possible, and risk should be mitigated and managed where avoidance and substitution are not possible.

Pluvial flooding: this is usually associated with convective summer thunderstorms or high intensity rainfall cells within longer duration events, pluvial flooding is a result of rainfall-generated overland flows which arise before run-off enters any watercourse or sewer. The intensity of rainfall can be such that the run-off totally overwhelms surface water and underground drainage systems.

Assessment of minor proposals in areas of flood risk: states that applications for minor development, such as small extensions to houses, and most changes of use of existing buildings and or extensions and additions to existing commercial and industrial enterprises, are unlikely to raise significant flooding issues, unless they obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances. Since such applications concern existing buildings, the sequential approach cannot be used to locate them in lower-risk areas and the Justification Test will not apply. However, a commensurate assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. These proposals should follow best practice in the management of health and safety for users and residents of the proposal.

5.2. Louth County Council Development Plan 2015 to 2021

Zoning: the site is located within a Level 3 Settlement and within Zone 1 Residential (Existing) which seeks “To protect and/or enhance existing residential communities and provide for new residential communities.”

Flood Zones: The site is located within Flood Zone A and Flood Zone B.

Policy ENV 31: states that development plans and local area plans should manage the risk from..... pluvial flooding resulting from surface water runoff and capacity constraints in surface water drainage systems

Policy ENV 33: states that new development should be avoided in areas at risk of flooding....where justification to permit development can be provided on sustainability and planning grounds, cognisance must be taken of outputs of CFRAM Studies in the provision comprehensive flood protection & management measures....

5.3. Natural Heritage Designations

Dundalk Bay SPA, SAC & pNHA c.2km to the E.

6.0 The Appeal

6.1. Grounds of First Party Appeal

General:

- The site is located within residentially zoned lands, the use is not abandoned as the house is the subject of a Derelict Sites Notice and the proposed works are acceptable in principle.
- Flood Risk Assessment report submitted as FI but appears to have been ignored by the planning authority.
- The PA did not take adequate account of the 2009 Flood Risk Management Guidelines and failed in the application of section 8.15 and Policy ENV 33 as the proposal was incorrectly assessed as a new or major development.

- The works are appropriate as they comprise minor amendments to an existing dwelling within a residential zone and the increased floor levels would reduce the risk of flooding (as per the Justification Test in Box 5.1 of the Guidelines).
- The development cannot be premature as it already existed before the deficiencies in the storm drainage system arose which were caused by the council's decision to grant further permissions upstream of the development.
- The proposal will not introduce any new people into the flood risk area as the existing house was previously occupied with no change to GFA.
- No evidence to substantiate claim the residential amenity and ecology would be adversely affected and no additional discharge to the public storm water system as a result of the proposed works.
- Proposal would make a positive contribution to the amenities of the area.
- Entirely different to previously proposed house, it seeks to amend the orientation to maximise solar gain and to raise the internal floor levels.
- Seeks to address the flooding issue which has not been caused by the residential use of the site, flooding is caused elsewhere on third party lands and by deficiencies in the surface water network downstream of the site.
- The house is derelict due to fire damage and not flooding and the adjacent house does not form part of this application.
- The proposed works will not exacerbate flooding elsewhere.
- Proposal takes account of the concerns raised under PL15.235132 particularly in relation to displacement of flood waters to neighbouring sites.

6.2. Planning Authority Response

No new issues raised.

6.3. Observations & Prescribed Bodies

No submissions received.

7.0 **Assessment**

The main issues arising in this case related to the following:

- Principle of development & material contravention
- Visual & residential amenity
- Flood risk & drainage
- Other issues

7.1. **Principle of development and material contravention**

Principle of development:

The proposed development would be located within the Level 3 Settlement of Dromiskin and within an established residential area which is currently zoned "Zone 1 - Residential (existing)" in the Louth County Development Plan 2015 to 2021. This zoning objective seeks to "protect and/or enhance existing residential communities and provide for new residential communities." The proposed development would be compatible with this zoning objective.

Material contravention:

The planning authority decided to refuse planning permission for 1 reason which stated that the proposed development would materially contravene Policy ENV 33 of the Development Plan as the site is located within an area which is at a risk of flooding and if permitted would introduce a number of people into that flood risk area. Policy ENV 33 states that new development should be avoided in areas at risk of flooding. However, it is recognised and acknowledged that the key urban settlements are at risk from coastal and fluvial flooding, but their continued growth and expansion can be facilitated through the careful expansion of the urban core and the implementation of appropriate land uses in areas at risk. New developments within a flood plain, will not only be at risk of flooding, but can add cumulatively to the risk of flooding elsewhere, and serve to undermine the flood plain's natural function of accommodating and attenuating flood flows. Accordingly, to minimise flood risk and help maintain their natural function it is essential to avoid development within flood plains wherever possible. However, where justification to permit development can be provided on sustainability and planning grounds, cognisance must be taken of outputs of CFRAM Studies in the provision comprehensive flood protection and management measures; which should be fully implemented in conjunction with any development in flood risk areas. Appropriate land uses should also be incorporated into those areas at risk.

Section 37 (2) (a) and (2) (b) of the Planning and Development Act, 2000 (as amended) set out the circumstances under which the Board can overturn the decision of a planning authority when material contravention forms part of the reason for refusal. These exemptions relate to: - developments which are of national or regional importance; conflicting objectives in the Development Plan or the objectives are not clearly stated as far as the proposed development is concerned; national planning policy and regional guidance; and the pattern of planning permissions since the last Development Plan.

Policy ENV 33 states that new development should be avoided in areas at risk of flooding, it recognises and acknowledges that key urban settlements are at risk from coastal and fluvial flooding and concludes that it is essential to avoid development within flood plains wherever possible. The proposed development would comprise alterations to an existing dwelling house that is located within an area at risk from

pluvial flooding as a result of localised deficiencies in surface water drainage and changes in level between the road and the site. It would not occupy an area at risk from coastal or fluvial flooding and it would not be located with a flood plain.

Having regard to the foregoing, I am satisfied that the current case would represent an exemption under Section 37 (2) (b) (ii) as the objectives of Policy ENV33 are not clearly stated as far as the proposed development, which comprises alterations to an existing dwelling house and not a new development, is concerned. In the event that the Board do not concur with this conclusion, then it may wish to apply the de-minimis rule.

7.2. Visual and residential amenity

The proposed development would comprise external alterations and internal renovations to the existing derelict house. The existing front gable and hipped roof would be replaced by standard side gables and pitched roof with 2 x dormer windows in the front roof plane. It is noted that the design, layout, elevations and roof profile are similar to the previously proposed replacement house which was refused permission by the Board under PL15.235132 for reasons related to flooding. However, the previously proposed new house was c.197sq.m and c.13m wide as opposed to the existing house which would remain c.146sq.m. and c.11m wide.

The proposed development would provide for an acceptable level of residential amenity in terms of floor area, room sizes, orientation, storage and amenity space. The separation distances with the neighbouring houses would not be altered with no loss of residential amenity anticipated.

Although the external appearance of the existing house would be altered the proposed works would not have an adverse impact on the visual amenities of the area. Whilst it is acknowledged that the location of the public foul sewer places a physical constraint on the type of landscaping and boundary treatment that would be suitable for the site, the concerns raised are not insurmountable and the site could be landscaped and the boundaries defined by the use of planted containers. A detailed landscaping plan should therefore be required for the written agreement of the planning authority.

7.3. Flood risk and drainage

The proposed development would comprise the alteration and renovation of an existing dwelling house that has been vacant and derelict for a substantial period of time. The structure has been damaged by fire, the roof is partially missing and the building is in an advanced state of disrepair. The applicant proposes to alter the external appearance and internal layout of the house, and to raise the finished floor level (FFL) above the existing level to ensure that the building is not affected by localised pluvial flooding.

The public road to the E of the site slopes down from S to N towards the appeal site, and the appeal premises and the adjacent house to the S are located at a lower level than this road as the lands also slope down from E to W at this point. The neighbouring residential sites to the N and S are located at a higher level than the appeal premises whilst the houses to the rear/W are located at a similar or slightly lower level. Both the appeal site and the adjacent sites to the S and W are prone to flooding during periods of heavy rainfall when the surface water drains reach full capacity and water spills over to the lands occupied by the appeal premises and neighbouring houses.

Section 5.28 of the Planning System and Flood Risk Management Guidelines (2009) states that applications for minor development, such as small extensions to houses, are unlikely to raise significant flooding issues, unless they obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances. Since such applications concern existing buildings, the sequential approach and Justification Test will not apply, however such applications should demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities.

It is noted that the proposed development would not obstruct an important flow path, introduce a significant additional number of people into a flood risk area or entail the storage of hazardous substances. However, the site lies with Flood Zones A and B

(as designated in the Development Plan) and there is an identified deficiency in the surface water drainage arrangements for the surrounding area.

As previously noted, planning permission was refused by the Board for a slightly larger replacement house on the site under PL15.235132 for one reason related to flooding linked to surface water drainage deficiencies in this part of Dromiskin. The Board considered that the proposal failed to address the underlying cause of the flooding, and that the measures to alleviate flooding on this site in isolation (by raising ground levels on the site) would increase the risk of displacing flooding onto adjacent areas. The Board also noted the applicant's response in relation to the underlying causes of flooding in the area, and considered that this should be addressed in conjunction with the planning authority.

The applicant submitted a Flood Risk Assessment (FRA) report by way of Further Information. This report confirmed that the proposed works would take place within the footprint of the existing house and that there would be no increase in impermeable areas. There is no fluvial or coastal flooding as the nearest watercourse is c.2.2km to the N at the River Fane and the coast is c.3km to the E, although there is historic evidence that a small stream flowed along the roadside boundary with St. Ronan's Villas. The site is prone to pluvial flooding due to overflowing of the public drainage system which is in Council ownership, and a floodplain has effectively been created at the appeal site as a result of the drainage deficiencies in the area.

The FRA report largely adhered to the advice contained in the Planning System and Flood Risk Management Guidelines (2009) and Section 5 dealt with flood risk management. Sub section 5.2 set out proposed mitigation/control measures which include increasing the FFL of the house to a level that would be above the level of the public road whilst retaining the existing site levels so as not to displace flood waters to adjacent sites. This would be until the works to the existing public drainage system are undertaken by the County Council. The report concluded that there will be negligible consequences of flooding of the site to persons, property or the environment as the existing arrangement and flooding regime will remain as it

currently exists, and any residual risk to the proposed development within the site and the wider area can be managed to an acceptable level of risk.

The applicant also submitted a Surface Water Flooding report which described the existing surface water drainage system, highlighted deficiencies in the system and suggested possible improvement works to be undertaken by the County Council.

The contents of the applicant's Flood Risk Assessment and Surface Water Flooding reports are noted. It is also noted that the Council's Infrastructure Engineer recommended that planning permission be refused on the grounds of prematurity as no works have taken place to address the surface water drainage deficiencies.

The first main difference between the previously refused and currently proposed developments is that it is now proposed to retain the existing building and site levels so that would be no increase in permeable area and no displacement of flood waters to adjacent sites over and above the current situation. The second main difference is that it is now proposed to raise the FFL of the existing house above the level of the public road so that the house itself would be protected from flooding.

The proposed solution would address part of the Boards previous concerns in that the proposal to alleviate flooding on the site in isolation (by raising ground levels on the site) which would increase the risk of displacing flood water onto adjacent sites, has been omitted from the current proposal. However, the site would continue to be located within an area that is prone to flooding which is related to surface water drainage deficiencies in this part of Dromiskin, and as such, the proposed development would be premature pending the implementation of works, by the Council, to address the underlying cause of the flooding.

Furthermore, it is noted that the application was not accompanied by a Structural Engineers Report which would be required to assess the structural stability of the existing building, which is derelict and in an advanced state of disrepair, and the feasibility of carrying out the proposed alterations and renovations. It is also noted that although the FRA report concludes that any residual risk within the site and the

wider area could be managed to an acceptable level of risk, no details have provided in relation how this could be achieved, particularly in relation to the adjacent sites.

Having regard to all of the forgoing, and notwithstanding the main differences between the previously refused and currently proposed developments, the proposed development would be located within an area that is prone to flooding and it would be premature until such time as the public drainage issue is resolved. There is also no guarantee that levels of pluvial flooding would remain constant having regard to recent weather events. The proposed development would also seriously injure the amenities of future occupants of the altered and renovated house and, in the absence of detailed mitigation measures, could increase the risk of displacing flood water onto adjacent sites, which would in turn seriously injure the residential amenities of neighbouring properties.

7.4. **Other issues**

Vehicular access & car parking: The existing entrance and car parking arrangements would be retained which is acceptable in terms of traffic safety.

Screening for Appropriate assessment: The site is located c.2km from the nearest European site to the E at Dundalk Bay and there would be no direct connection between the proposed works, which would occupy already developed lands.

8.0 **Recommendation**

Arising from my assessment of the appeal case I recommend that planning permission should be refused for the proposed development for the reasons and considerations set down below.

9.0 **Reasons and Considerations**

1. The subject site is prone to flooding, which is related to surface water drainage deficiencies in this part of Dromiskin and the proposed development

would be premature until this deficiency is resolved. The proposed development would also seriously injure the amenities of future occupants of the altered and renovated house and, in the absence of detailed mitigation measures, it could increase the risk of displacing flood water onto adjacent sites, which would in turn seriously injure the residential amenities of neighbouring properties. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Karla Mc Bride
Planning Inspector
8th August 2018