



An
Bord
Pleanála

Inspector's Report ABP-301993-18.

Development	Indefinite retention of prefab at Grange National School.
Location	Grange National School, Park, Grange, Clonmel, Co. Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	18/600452.
Applicant(s)	Grange National School.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	Third Party.
Appellant(s)	Johnny Casey & Neil Midgley.
Observer(s)	None.
Date of Site Inspection	30/08/2018.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site comprises the Grange National School which is located within the settlement of Grange, Co. Tipperary. Grange lies approximately 8km to the west of the town of Clonmel and the existing school is located on a site covering 0.3549ha.
- 1.2. The site is laid out with the existing Grange National School buildings and car parking area to the front – north - and the playing yard area to the rear of the buildings. The yard also has basketball hoops.
- 1.3. There is an existing grassed playing pitch to the rear of the site and this pitch is accessed via a laneway from the public road which runs to the east of the school. To the east of this laneway, there is a development of five dwelling houses and there is one house located immediately adjacent to the school to the west.
- 1.4. The prefab, the subject of this appeal, is located to the rear – south – of the site. The school site is generally level. The site of the prefab is not visible from the public road.

2.0 Proposed Development

- 2.1. Permission is sought for the indefinite retention of prefab at Grange National School.
- 2.2. The prefab has a stated floor area of 78.84m² and provides for a classroom and associated WC facilities. The submitted cover letter with the application indicates that the structure is used as an Art Room, Music Room, Library or other such activity which complement the existing mainstream classroom provision. It is submitted that the indefinite retention of the structure will provide increased flexibility to the school in terms of timetabling and scheduling of specialist classes and activities.
- 2.3. The application advises that the structure is not being retained to cater of any increase in enrolment numbers.
- 2.4. The school is currently connected to the public water mains and is serviced by a Wastewater Treatment System which has a design capacity of 215 persons.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission for the retention of the prefab for four years and included a condition which restricted its use to ancillary and specialist educational uses only.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Report formed the basis of the decision to grant permission. The report notes that the prefab is to be used for activities which complement the existing mainstream classroom provisions. There is no increase in enrolment numbers. The report acknowledges the location of the WWTP and concludes that a further temporary permission can be considered.

3.2.2. Other Technical Reports:

None.

3.2.3. Third Party Submissions:

There is one third party objection noted on the PAs file. The issues raised are summarised as follows:

- There is a history of non-compliance with planning regulations at the school.
- The land is unable to cope with intensive development.
- The schools provision for sewerage is inadequate.
- The 2017/2018 enrolment is recorded as being 110 girls and 99 boys, with 11 teachers, 2 Special needs assistants, a secretary and a caretaker. The school is overcapacity in terms of their sewerage system which has a capacity of 215 persons.
- Indefinite retention of a prefab is unsustainable.

- Appropriate enforcement action should have been taken months ago to ensure the immediate removal of the prefab as required by expired permission 13/177.
- It is further expected that the limits to growth that the sewerage system's capacity clearly applies to the schools population numbers are also enforced to protect the extremely vulnerable underlying aquifer.

4.0 Planning History

ABP PL 23.242396 (PA Ref 13/177): Permission granted to retain existing prefab on site.

ABP PL23.241168 (PA ref 12/277): Permission granted for (a) construction of a single storey extension comprising a classroom and ancillary facilities (b) alterations to existing elevations and (c) associated site boundary and site development works.

PA ref 06/944: Permission granted to provide and erect a temporary pre-fabricated classroom, with ensuite toilets.

PA ref 05/1660: Permission granted to extend school car park, to include the construction of entrance to car park, low front wall and paths and all necessary site works.

ABP PL23.205399 (PA ref 03/1114): Permission granted on appeal for construction of a single storey permanent extension to the existing school building including a new effluent treatment system.

PA ref 03/1082: Permission granted to retain a single storey temporary classroom to the rear of the existing school building.

PA ref 02/637: Permission granted for 2 transportable prefabricated buildings (to accommodate 3 no. classrooms with toilets and ancillary accommodation with associated external works).

PA ref P3.9428: Permission granted for extension to Grange National School.

PA ref P3.8070: Permission granted for extension to Grange National School.

5.0 Policy Context

5.1. Development Plan

The South Tipperary Development Plan 2009-2015 is the relevant policy document pertaining to this site.

The site is located within the settlement node of Grange and is zoned for 'Social and Public' land use where it is the stated objective 'to protect and provide for social and public facilities including education, religious and community uses'.

The Settlement Plan for Grange notes that some lands within the village boundary are prone to flooding.

5.2. Natural Heritage Designations

The site is not located within any designated site. The Lower River Suir SAC, site code 002137 is located approximately 2.5km to the east of the site.

6.0 The Appeal

This is a third party appeal against the decision of Tipperary County Council to grant permission for the retention of the prefab.

6.1. Grounds of Appeal

The grounds of appeal reflect those objections submitted to the PA during their consideration of the proposed development. The grounds of appeal are summarised as follows:

- The school has not provided the necessary information to prove that the development is compliant with the relevant site and sewerage requirements to support a retention.
- An indefinite permission undermines the planning process.
- Planning history associated with the site raised as a concern.

- The gravity of flooding problems locally have not been reflected in the PAs report. Pluvial flooding is a recognised issue but no Flood Risk Assessment is submitted.
- The sewerage treatment system is currently being loaded beyond its design capacity.
- The Councils website is inaccurate in terms of the expiry date of the previous permission for the site.
- Issues in relation to enforcement raised. The school operates with numbers above the design capacity of the WWTP, with 209 students and 15 staff members.
- The prefab has remained on site since 2006 and is proposed to be used for special needs teaching, which further increases the overall population of the school.
- Issues raised regarding zoning in Grange and the lack of the suitability for the land to deal with waste water.
- Permission has been refused in Grange due to flood reporting and the OPW flood maps have not been updated. Works to create a footpath from the school to the village centre have not provided a FRA and will impact on flooding.
- The provision of the footpath will reduce the provision of parking and provide for drainage off site.
- The unnecessary expansion of the school population, through enrolling pupils from outside the catchment, is the source of all planning problems on the site.
- Condition restricting the use of the prefab is too vague to be enforceable.
- The school population needs to be unambiguous and enforced going forward to avoid any repetition of the current sewerage overloading.
- Issues raised in relation to the processing of application.
- It is requested that Section 35 of the Planning & Development Act, 2000 be applied to this application and that permission be refused.

There are a number of enclosures with the third party appeal.

6.2. Applicant Response

The applicant has responded to the third party appeal as follows:

- Much of the content of the appeal bears no specific relationship to the subject matter and the appeal includes personalised remarks, ill-founded allegations and questioning the professionalism of those involved.
- The prefab will continue to be used for a variety of specialist subjects and will not impact on enrolment numbers in the school. Nor does it contribute to over-use of the treatment plant or contribute to the pluvial flooding issues in the wider Grange area.
- The retention of the prefab will improve the resources and quality of educational opportunity available to the children.
- The current sewerage system continues to be checked and serviced bi-annually and has passed each inspection.
- The school website has not been updated. Enrolment figures are a matter of public information.
- The applicant takes issue with the language used in the appeal.
- The school does not tout for numbers.
- The submission includes a number of initiatives the school is involved in which contributes to the local community and that they are not the 'law breaking, cynical establishment' they are purported to be.

The response includes details of the most recent service report from Anua Environmental Ltd who service and maintain the existing WWTP at the school. It is requested that permission be granted for the retention of the prefab.

6.3. Planning Authority Response

The Planning Authority has submitted a response to this third party appeal. The submission is summarised as follows:

- It is considered that the further temporary retention of the prefab is acceptable and will be used for activities which complement the existing mainstream classroom provision.
- The existing WWTP was considered and approved. It is submitted that there has been no increase in enrolment in recent years and that the existing system is capable of accommodating in excess of current enrolment.
- The proposal does not increase school numbers.
- The site is shown to be located outside any known flood risk zone.

It is requested that temporary permission be granted.

6.4. **Observations**

None.

7.0 **Assessment**

I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Planning History & Water Services
3. Other Issues
4. Appropriate Assessment
5. Environmental Impact Assessment

7.1. **Principle of the development:**

- 7.1.1. The subject site is located within the settlement boundaries of Grange and on lands zoned to provide and improve social and public facilities. The Board will note the comments of the third party in relation to intensive development. I would not consider that the current proposal amounts to intensive development and am satisfied that the principle of the proposed development, being the retention of the

prefab on the school site for use by the school for specialised activities, is acceptable in principle and would comply with the zoning objectives afforded to the subject site.

7.2. Planning History & Water Services Other Issues

- 7.2.1. I note the planning history associated with the current site. The original permission for the prefab, PA ref. 06/944, required that the prefab be removed in 2011. The condition which permitted the prefab temporarily was included in order to assess the impact of the prefab having regard to changes in technology and design as well as circumstances prevailing at the time. The Board permitted an extension to the school, ABP PL23.241168 (12/277) refers, and included condition 2 which required that the prefab be removed within two months of the occupation of the school, unless authorised by a further grant of permission.
- 7.2.2. The Board will note the level of frustration of the third party appellant in terms of this appeal. While I appreciate this, the issues of potential non-compliance matters arising at the site, including matters the subject of enforcement actions, are outside the remit of An Bord Pleanála. In addition, all issues raised relating to zoning and policy are also matters for the County Council. I would further note that the conditions attached to previous grants of permission would not preclude further applications for the retention of the prefab on the site.
- 7.2.3. The appellant has raised concerns that the school is operating beyond the capacity of the existing wastewater treatment system on the site. Condition 3 of the Boards previous permission, ABP PL23.241168 (12/277) refers, required that the existing wastewater treatment system shall be maintained and operated in accordance with the requirements of the Environmental Protection Agency 'Wastewater Treatment Manuals: Treatment Systems for Small Communities, Business, Leisure Centres and Hotels'. The applicant shall continue on-going maintenance contracts with a qualified operator and shall submit copies of signed maintenance agreements to the planning authority on a yearly basis. In response to the third party appeal, copies of the Service Inspection reports from Anua Environmental Ltd have been submitted.
- 7.2.4. While I note the numbers at the school, the applicant has indicated that the prefab would be used for a variety of specialist subjects and activities, such as an Art

Room, Music Room, library or other such activities which will complement the existing mainstream classroom provision. It will not be used as a mainstream classroom and will therefore, not provide for increased enrolment numbers at the school. As such, a grant of retention will not have an impact on the loading on the wastewater treatment system. While I acknowledge the location and proximity of the WWTP to the prefab, I am satisfied that a grant of permission in this instance is acceptable. Any issues of non compliance with previous grants of permission are a matter for the Planning Authority.

7.3. Other Issues

7.3.1. The Board will note the request from the appellant with regard to the zoning of the site. I am satisfied that the issues raised in this regard are outside the remit of the Board.

7.3.2. Issues were raised in relation to the processing of the application, in particular, with regard to public notices. In addition, it is noted that there were issues in terms of information available on the PAs website. These are matters for the PA.

7.3.3. The third party appellants have raised concerns in terms of flooding. The planning history of this site would suggest that the school grounds or the immediate vicinity of the site have not been subject to regular flooding. I note the photographs submitted by the third party depicting incidents of flooding in Grange from 2009 which were a consequent of extreme weather events in November of that year. There is no record of flooding on the site or its vicinity identified on the OPW website www.Floodmaps.ie, nor was there any evidence of significant surface water on the date of my site inspection. I note the concerns of the third party in relation to the provision of a proposed footpath and the potential impacts associated with same. However, this is outside the remit of this application and appeal. The application is for the retention of an existing prefab on the site, and in this regard, there are no 'development works' proposed or required which would likely impact on the existing flood regime of the site. Should the Board be minded to grant permission in this instance, I am satisfied that the development is acceptable in terms of drainage.

7.3.4. The Board will note that the application is for 'indefinite' retention of the prefab. I note the comments of the Board in this regard from the previous decision on

the site and would agree, that a permanent permission for a prefab would be inappropriate. There is no demand for the prefab for use as a classroom, rather, it is used for a variety of specialist subjects and activities. The applicant submits that the continued use of the prefab as proposed complements the existing mainstream school, does not impact on enrolment numbers and improves resources and quality of educational opportunity available to the children.

7.3.5. In this regard, I have no objection in principle. I would agree that an indefinite permission for what is by its nature, a temporary structure, would be inappropriate. Having undertaken a site inspection, I consider that the current condition of the prefab is good and would appear fit for purpose. Should the Board be minded to grant permission in this instance, a temporary permission of 5 years would be appropriate in my opinion.

7.3.6. The Board will also note that the appellant has requested that S35 of the Planning & Development Act be applied in this instance. Section 35 of the Planning and Development Act, 2000 dealt with the refusal of planning permission for past failures to comply with a previous grant of planning permission and/or the attached conditions. Section 9 of the Planning and Development (Strategic Infrastructure) Act 2006 amended section 35 to provide that a planning authority may, where it forms the opinion that there is a real and substantial risk that a proposed development would not be completed in accordance with the permission being sought, refuse permission without prior authorisation from the Courts, to a person or company who has failed substantially to comply with a previous permission or who has carried out substantial unauthorised development, or has a conviction for an offence under this Act.

7.3.7. Under section 35(4)(a), the planning authority is required to give the applicant prior notification that it considers that there are grounds for its being able to form an opinion by specifying the substantial unauthorised development it intends to take into consideration. Section 35(4)(b) requires that the PA give the applicant an opportunity to respond. Following a consideration of any such response, Section 35(5) provides that the planning authority may then proceed to form the opinion that there is a real and substantial risk that a proposed development would not be completed in accordance with the permission being sought and proceed to refuse permission

where the applicant has (in this case) carried out substantial unauthorised development. This does not arise in this instance.

7.4. Appropriate Assessment

Having regard to the location of the subject site within a settlement note and on zoned and development lands, together with the nature and scale of the proposed development, I am satisfied that there is no potential for impact on any Natura 2000 site, warranting AA.

7.5. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

- 8.1. It is recommended that permission be granted for the proposed development subject to a time limit and the following conditions.

9.0 Reasons and Considerations

Having regard to the 'Social and Public' land use zoning objective for this area, and to its location within a designated Settlement Node, as set out in the South Tipperary County Development Plan 2009-2015, to the established educational use of the site, the limited extent and scale of the development, the planning history of the site, and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, would not exacerbate flooding in the vicinity, and would be acceptable in terms of traffic safety and convenience. The development proposed for retention would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained 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 and the development shall be retained in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The existing pre-fabricated structure and associated works shall be removed from the site within five years of the date of this order and the site shall be reinstated and landscaped to the written satisfaction of the planning authority unless, prior to the end of the period, planning permission shall have been granted for its retention for a further period.

Reason: To allow a review of the suitability of this temporary structure for its purpose, and in the interest of public health.

3. The use of the structure proposed to be retained shall be limited to ancillary and specialist educational uses only, unless otherwise authorised by a prior grant of planning permission.

Reason: In the interests of clarity and of public health, having regard to the limited expansion capacity of the existing wastewater treatment and disposal system.

4. (a) The structure to be retained shall be connected to the wastewater treatment and disposal system of the main school within three months of the date of this order.

(b) The existing wastewater treatment system shall be maintained and operated in accordance with the requirements of the Environmental Protection Agency 'Wastewater Treatment Manuals: Treatment Systems for Small Communities, Business, Leisure Centres and Hotels' and to the written satisfaction of the planning authority. The developer shall continue on-going maintenance contracts with a

qualified operator and shall submit copies of signed maintenance agreements to the planning authority on a yearly basis.

Reason: In the interests of clarity, public health and amenity.

5. 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.

A. Considine
Planning Inspector

03rd October, 2018