



An
Bord
Pleanála

Inspector's Report ABP 303149-18.

Development	Retention of a short stay self-catering holiday home and associated site development works
Location	Starboard House, Clanrye, North Commons, Carlingford, Co.Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	18/744.
Applicant(s)	Mr James Byrne.
Type of Application	Retention
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Mr James Byrne.
Observer(s)	None.
Date of Site Inspection	02 nd of February 2019
Inspector	Karen Hamilton

1.0 Site Location and Description

- 1.1. The subject site contains a large two storey over basement dwelling (459m²) accessed directly off the R173, Carlingford to Greenore, Co. Louth. The dwelling is within a wooded area accessed along a sweeping drive way, on an elevated location overlooking Carlingford Lough. The building is currently in use as a short term holiday letting, advertised as “Starboard House”.

2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
- Retention of a dwelling (459m²) for use as a short stay self-catering holiday home.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for the proposed development for 6 no. reasons as summarised below:

1. The site is located in development Zone 2, an area of high scenic quality in the development plan. Policy RD 33 outlines the uses applicable in this development zone where short-term self-catering holiday homes are specifically excluded, therefore the proposal materially contravenes the development plan.
2. The proposed development constitutes an intensification of an access onto Regional Route 173, which is a Protected Regional Route in the development plan. Table 7.3 of the development plan restricts intensification save for limited exemptions of which the proposed development does not constitute. Therefore, the proposed development would contravene Policy TC 10 of the development plan.
3. Table 7.4 of the development plan provides minimum visibility splays for new entrances or intensification of existing entrance onto the Protected Regional Route and Table 7.3 provides exemptions for uses which will be considered

for access. The proposed development does not meet the minimum requirements and therefore is a material contravention of Policy TC 12 of the development plan and will endanger public safety by reason of traffic hazard.

4. The existing septic tank caters for a 5 bedroom domestic dwelling with a population equivalent (p.e) of 7 persons. The existing short stay self-catering holiday accommodation has a maximum occupancy of 20 persons. The applicant has failed to provide any evidence the additional loading can be accommodated in the septic tank and in the absence of such information it cannot be determined there would be no impact which would be prejudicial to public health.
5. The size of the holiday home is 459m² and the maximum ground floor area permitted in development zone 2 is 220m². The holiday home as constructed contravenes Policy SS 51 of the development plan.
6. The applicant has failed to demonstrate how surface water disposal is managed to minimise storm water run-off, by the incorporation of Sustainable Urban Drainage Systems (SuDS). Therefore the development contravenes Policy WS 10 of the development plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse the proposal and refers to the following:

- The inclusion of the property on a short-term holiday webpage which advertises accommodation for to 20 persons.
- The planning history and the previous permission for a domestic dwelling with an occupancy clause.
- The policies and objectives of the development plan in relation to the permitted uses in development zone 2, and acceptable access onto identified Protected Regional Routes.
- The principle of development, scale of proposal and access was deemed unacceptable at this location.

3.2.2. Other Technical Reports

Infrastructure Section- Request for further information in relation to sightlines onto the R173, qualifications to access the R173 and details on the surface water.

Environment Section- Request for further information in relation to the existing wastewater treatment system.

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

None received.

4.0 Planning History

Reg Ref 06/777

Permission granted through a Section 4 motion (proposed and voted by the elected members) for a replacement dwelling with a floor space limit of 375m².

Condition No 2 included an occupancy condition for a period of seven years and no conditions were included for the waste water treatment system.

5.0 Policy Context

5.1. National Policy

EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009)

5.2. Louth County Development Plan 2015-2021

The site is located within Development Zone 2, where it is an objective to *“To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community.”*

Development Zone 2

Policy RD 33- To permit only essential resource and infrastructure based developments and developments necessary to sustain the existing local rural community. Such development would include limited one-off housing, agricultural developments, extensions to existing authorised uses and farms, appropriate farm diversification projects, tourism related projects (excluding holiday homes), active recreational amenities such as pedestrian and cycle paths, equestrian trails, ecological corridors, small scale ancillary recreational facilities, and renewable energy schemes.

Policy RD 34- Multi-unit residential, large scale intensive industrial, agricultural and commercial developments or other developments of a similar scale or nature would not be considered appropriate within this zone.

Section 6.6.2 Self Catering Accommodation

Section 6.6.2- Definition of self-catering accommodation *“a purpose built self-contained residential units, which provide accommodation on a short term basis for visitors to the area”*.

Policy EDE 27- To facilitate the limited provision of self-catering accommodation in locations within existing towns and villages, of a scale that the settlement can sustain.

Policy EDE 28- To prohibit proposals for the development of self-catering accommodation in the countryside except where existing buildings of character are to be converted or where restoration of vernacular buildings is proposed.

Access

TC 10- To prohibit the creation of new accesses or intensification of existing accesses onto National Routes and Protected Regional Routes as set out in Tables 7.2 and 7.3

TC 11- To apply the visibility standards as required and set out in Table 7.4 and 7.5.

Table 7.3: Protected regional Routes- restrictions and Exemptions on Access

Table 7.4: Minimum Visibility Standards for a Protected Regional Route, y- 215m and x- for more than 6 houses or non-domestic developments 4.5m.

Surface Water

Policy WS 10- To ensure that the incorporation of Sustainable Urban Drainage Systems (SuDS) measures in all developments is mandatory.

5.3. **Natural Heritage Designations**

Carlingford Shore SAC is located c.120m north along the coast.

Carlingford Mountain SAC is located c. 650m south west.

Carlingford Lough SPA is located c. 1.8km south east.

5.4. **Environmental Impact Assessment (EIA)**

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations and therefore is not subject to EIA requirements.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal are submitted by an agent on behalf of the applicant and the issues raised are summarised below:

Tourism

- Starboard House is a 5 star rated facility by Failte Ireland which provides high quality accommodation. The facility adds to Carlingford Tourism provision.
- In 2017 the tourism revenue increased substantially from 2013 and 20% of the accommodation was self-catering.
- Statistics are included to support the argument that Carlingford is an attractive tourism destination which requires self-catering accommodation.

Previous use on site

- The dwelling was approved under Reg. Ref 06/777 for the applicant.
- The site remains the applicant's main private residence and is only rented on an occasional basis.

- There have never been more than 15 person staying and not the 20 as stated in the planners report.
- The property is only rented out approximately one third of the year.

Planning Policy Context

- The policies of the development plan in relation to economic development supports a wide range of quality accommodation.
- Policy EDE 19 of the development plan indicates support for tourism projects.
- The County Louth Tourism & Heritage Action Plan 2016-2021 provides a strategy for tourism which includes a key objective to ensure the provision of high quality guest houses.
- The development plan defines self-catering accommodation as *“purpose built self-contained residential units, which provide accommodation on a short-term basis for visitors of the area”*.
- Policy EDE 28 of the development plan prohibits proposals for self-catering accommodation in the countryside except where existing buildings of character are to be converted or where the restoration of vernacular dwellings is proposed.

First Reason for refusal

- The short-stay accommodation does not have a negative impact on the scenic quality of the landscape, does not have a detrimental impact and is compliant with the zoning, therefore there is no material contravention.
- The Planning Authority have interpreted RD 33 incorrectly as the proposed development is not a holiday home, as specifically excluded in the Policy RD 33.
- Policy EDE 28 is more applicable to the proposed development as the property qualifies as an “existing building of character” and the use of the dwelling as “starboard” did require some internal remodelling.

Second and third reason of refusal

- Both the second and third reason for refusal relates to the intensification of the access onto the main road.
- The use of the site for short stay accommodation generated less volume of traffic than the use as a dwelling.
- Guests usually stay within the building rather than undertaken several trips such as those by a normal household.
- The planner states that the use of the site for 20 persons would lead to additional generation of traffic which would create a traffic hazard, therefore contrary to Policy TC 10 and Table 7.3 of the development plan.
- There is only capacity for 15 guests and many of these guests arrive together.
- The Infrastructure Section recommended further information rather than a refusal and the applicant did not have the opportunity to reply to the further information.
- There has never been an accident at the junction. The planning authority have not indicated how the proposed development would diminish the carrying capacity of the R173 or endanger traffic safety.

Fourth reason for refusal

- The planning authority assumed the capacity of the accommodation was 20 when in actual fact it is 15 and there are rarely more than 10 persons.
- The Infrastructure Section of the council did not recommend refusal rather the Planning Authority refused due to the absence of any information on the wastewater system.
- Appendix 1 includes a statement of assessment by a local engineering company.
- It is proposed to install a new treatment system to comply with the EPA document "*Treatment System for Small Communities, Business, Leisure Centre and Hotels*"
- The applicant would accept a condition on any grant of permission requiring the inclusion of a Bioficient Klargeseter Sewage treatment Plant.

Fifth reason for refusal

- Policy SS 51 states “To require that new dwellings and or extensions to existing dwellings within Development Zone 1-6 inclusive shall comply with the minimum site size area and maximum cumulative gross floor areas as outlined hereunder in Table 2.9.
- The application has sought retrospective consent to use a building for short stay rather than the development of a new dwelling or extension.

Sixth reason

- Policy WS 10 requires compliance with SuDS
- The use of the dwelling for Starboard does not exacerbate any surface water drainage or attenuation on the site
- Surface water details were installed in accordance with Reg Ref 06/777
- If the Board considers necessary the applicant would accept a condition requiring the installation of an urban drainage system mechanism.
- The County Council Infrastructure team sought further information to allow demonstration of the surface water disposal.

Exempted development

- A slight reduction on the number of days in use i.e. 90 days would allow Starboard house to be exempted development under the new planning legislation.
- The Board granted permission (PL04.240756) for a quarry and overturned the inspector’s recommendation for refusal due to the importance to the national economy.

6.2. Applicant Response

The applicant is the appellant.

6.3. Planning Authority Response

A response was received from the planning authority as summarised below:

Principle of development

- The proposed development includes the retention of both the unauthorised increase in floor space (Reg Ref 06/777) and the use of the dwelling as self-catering accommodation.
- The change of use of the dwelling cannot be addressed without rectifying the initial unauthorised use.
- The house is used as a holiday home and has been described by the applicant as such in the development description.
- Louth County Council is aware the applicant's primary residence is not within the subject site.
- If the applicant resides in the dwelling also then they are using the property as a second home.

Access

- The use of the site for 15 persons, the maintenance on site by gardeners and cleaning staff and the alleged use of the site as a primary residence all contribute to the increase in vehicular movements into the site. The proposed development further intensifies the use of the domestic entrance.
- A separate dwelling, which also uses the site "Port Cottage" adds to the intensification of the entrance.

Wastewater treatment system

- The use of the dwelling for either 20 or 15 persons is irrelevant as the waste water treatment system has been designed for 7 persons.
- The proposed upgrade of the existing treatment system (as per the applicants submission) does not include a site suitability testing.
- A mountain stream runs along the south-eastern boundary of the site which provides a direct pathway to a Natura 2000 site (Carlingford Shore SAC-135m away).

6.4. Observations

None received.

7.0 Assessment

7.1. The main issues of the appeal can be dealt with under the following headings:

- Principle of Development
- Size of Dwelling
- Access
- Waste Water
- Surface Water
- Appropriate Assessment

Principle of Development

7.2. The proposed development includes the retention of an existing dwelling for self-catering accommodation for up to 15 persons. The dwelling is located on an elevated site overlooking Carlingford Lough within the rural area of County Louth, north of the settlement of Carlingford. The site is located within development control zone 2, where it is an objective "To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community". Policy RD 33 of the development plan lists the permissible uses within this zone where holiday homes are specifically excluded. In addition, Policy RD 34 states that multi-unit residents or other large scale intensive commercial developments are not considered appropriate within this zone.

7.3. The first reason for refusal refers to the policies of the development plan restricting the use of the dwelling for self-catering accommodation, as specifically excluded in Policy RD 33. The grounds of appeal do not consider the use of the dwelling can be assessed as a "holiday home" and consider Policy EDE 28 applicable where self-catering accommodation is acceptable in buildings of character which are to be converted or where restoration of vernacular buildings is proposed. The dwelling is a large contemporary new build with no rural character nor does it include any characteristics of a vernacular building, therefore I do not consider the exemptions

for self-catering accommodation within the rural area as specified in Policy EDE 28 apply.

- 7.4. The definition of self-catering accommodation in Section 6.6.2 of the development plan includes “purpose built self-contained residential units, which provide accommodation on a short term basis for visitors to the area”. I consider the use of the dwelling for self-catering accommodation essentially changes the demographic profile of the dwelling from resident to visitor which is applicable for use both as a holiday home and self-catering accommodation.
- 7.5. Having regard to the location of the dwelling and the proposed use on the site, I consider the restrictions for holiday homes and self-catering accommodation in both RD 33 and RD 34 apply to the proposed development. Therefore, it is considered the proposed development would be contrary to the policies and objectives of Louth County Development Plan 2015-2021, supporting development zone 2, which direct specific uses to serviced centres for the appropriate protection of the rural landscape.

Size of the dwelling

- 7.6. The dwelling was granted planning permission, via a Section 4 motion (Elected members) in 2007, under Reg Ref 06/777 for a dwelling (375m²) although the dwelling as constructed is 459m². Policy SS 51 and Table 2.9 of the development plan includes a limit on the floor space for dwellings in Development Zone 2 to 220m². Having regard to the objective for development zone 2 and the scenic quality of the landscape, I consider the size restriction in the development plan reasonable. The fifth reason for refusal referred to the size of the dwelling and considered it materially contravened the policies of the development plan.
- 7.7. The proposed development is for the retention of short stay self-catering house and the grounds of appeal consider the permission only relates to the use of the dwelling and therefore any reference to the size of the dwelling is not applicable. The response from the planning authority to the appeal considers the proposal related to the dwelling in its entirety and not in isolation to any unauthorised development (i.e. size of dwelling).
- 7.8. I consider it reasonable that the size of the dwelling should be addressed and whilst I note there is no specific reference in the development description to any increase in

floor space, I consider the applicant has applied to regulate and continue a use on the entire dwelling. I note the size restrictions for dwellings within the development plan and I consider the proposed development is excessive within a scenic rural area.

Access

- 7.9. The existing access from the R173 is set back from the public road and a long winding driveway leads up to the house. The access is shared with another self-catering residence "Port Cottage". The R173, Greenore-Carlingford, is a busy regional road and is listed in Table 7.3 of development plan as a Protected Regional Route where no new access or intensification of existing access are permitted, also supported in Policy TC 10.
- 7.10. The second reason for refusal refers to the intensification of the access to accommodate traffic movement by guests for the self-catering accommodation. The grounds of appeal do not consider self-catering accommodation would increase the movements in comparison to those of a private dwelling having regard to the occasional use. I note the applicant states that proposed occupancy of the accommodation is for up to 15 persons and consider the movement of this amount of persons, even on a car sharing basis, would substantially increase the number of vehicles travelling to the site. Therefore, I consider the proposed use would intensify the movement of traffic.
- 7.11. The minimum standards for visibility splays for Protected Regional Routes are set out in Table 7.4 and supported in Policy TC 12 of the development plan, where the y distance required is 215m and the x distance for non-domestic development is 4.4m which I consider reasonable to apply in this instance. The visibility splays of 215m in each distance cannot be achieved.
- 7.12. The proposed development does not include any alterations to the existing entrance. The Infrastructure Section of the local authority recommended further information detailing any proposed alterations to the entrance; the area planner noted the intensification on the site in the first instance and the absence of proposed amendments on the submitted plans and considered non-compliance with the minimum visibility standards would lead to a traffic hazard. I do not consider the applicant has submitted sufficient information to indicate any compliance with the

required minimum standards and considering the intensification on the site I consider the proposed development would endanger public safety by reason of traffic hazard.

Waste Water

- 7.13. The self-catering accommodation can cater for up to 15 persons. The existing septic tank caters for a 5 bedroom domestic dwelling with a population equivalent (p.e) of 7 persons. The fourth reason for refusal refers to the failure of the applicant to submit sufficient information to prove the septic tank on the site can treat additional loading.
- 7.14. The grounds of appeal included an engineer's report (Appendix 1) which states that a new wastewater treatment system will be installed in order to comply with the EPA document "*Treatment System for Small Communities, Business, Leisure Centre and Hotels*". I note the information required for compliance with the EPA document also include site conditions, waste water characterisation form etc. and the submitted engineers report acknowledges the new treatment plant and percolation piping is dependent on site characterisation testing, which has not be submitted.
- 7.15. The GSI Groundwater Maps classify part of the site as "Extreme" vulnerability and part "X" where rock is near the surface or karst, and indicate the site as a poor aquifer, representing a GWP response of R2¹ under the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009) (Annex B3). The EPA guidelines require a minimum depth of 1.2m unsaturated permeable subsoil and in the absence of any site characterisation test or trail holes, this cannot be established. In addition, the EPA guidelines are application for single houses with less than 10 persons and minimum separation distance to other features cannot be established. Further Information was requested by the Infrastructure Section on compliance with the EPA code of practice and details of the existing system and any proposal to upgrade the treatment system.
- 7.16. In the absence of any site characterisation form and having regard to the significant increase in the number of occupants in the dwelling, I do not consider the applicant has demonstrated that the proposed wastewater treatment can meet the requirements of the EPA Guidance. Therefore, I cannot conclude that the proposed development would not have a significant risk of ground water pollution on a site which I consider is located within a sensitive water environment.

Surface Water

- 7.17. The sixth reason for refusal states that the applicant has failed to demonstrate how surface water disposal is managed to minimise storm water run-off, by incorporation of Sustainable Urban Drainage Systems (SuDS). Policy WS 10 of the development plan requires the incorporation of SuDS in all developments in accordance with best practice guidance. The proposed development does not include any proposals for the treatment of surface water.
- 7.18. The grounds of appeal do not consider the use of the dwelling as “Starboard House” exacerbates the surface water drainage or attenuation on the site as the surface water details were installed as per Reg Ref 06/777.
- 7.19. Having regard to my previous assessment above on the size of the dwelling and the increase in the floor space, I consider the proposed development would be subject to these requirements to incorporate SuDS in the overall proposal and in the absence of any details the proposed development could not adequately treat the storm water.

Appropriate Assessment

- 7.20. The site is located c. 120m south of Carlingford Shore SAC (site code 002306), Carlingford Mountain SAC (000453) is behind the site, c. 650m south west and Carlingford Lough SPA (side code 004078) is located c. 1.8km south east.
- 7.21. The Carlingford Lough SAC lists the habitats of perennial vegetation of stony banks and drift lines as features of interest which are under threat from further commercial development and tourism¹. A small stream flows along the south east into Carlingford Lough. As stated above, I do not consider the applicant has sufficiently demonstrated that the treatment of effluent can comply with the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009), therefore there is a potential risk for groundwater or surface water pollution on a site which is only c.120m from the edge of the Carlingford Lough SAC. I do not consider there is any potential source/ pathway between the subject site and any further European Sites.
- 7.22. Therefore, having regard to the nature and scale of the proposed development, the conservation objectives and distance from the European Site, on the basis of the

¹ <https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002306.pdf> (02/02/19)

insufficient information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Carlingford Lough SAC (site code 002306), or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. The site is located within Development Zone 2 of the Louth County Development Plan 2015-2021, where it is an objective *"To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community"*. It is the policy of the planning authority to channel tourism and related service into serviced centres and restrict development in rural areas. Policies RD 33 and RD 34 restrict the location of holiday homes and self-catering residential units in rural areas. The proposed development would therefore, contravene materially the development objective as set out in the development plan, interfere with the character of the rural area and set an undesirable precedent for similar development in the vicinity. The proposed development would be contrary to the proposed planning and sustainable development of the area.
2. The site is located within Development Zone 2 of the Louth County Development Plan 2015-2021, where it is an objective *"To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community"* and Policy SS 51 and Table 2.9 of the development plan includes a limit on the floor space size for dwellings to 220m². The

proposed development includes retention of the use of a dwelling for short stay accommodation which is 459m² in size. Having regard to the size of the dwelling within a scenic area, it is considered the proposed development would interfere with the rural character and attractiveness of the area and set an undesirable precedent for similar developments in the vicinity and would be contrary to the proper planning and sustainable development of the area.

3. The proposed development would generate an increase in the volume of traffic, including a significant increase at weekends and during the holiday periods. The site is accessed from the R173, which is designated as a Protected Regional Route in the Louth County Development Plan 2015-2021. Table 7.3 and Policy TC 10 restricts the intensification of existing access, save for certain exemptions of which the proposed development is not included. In addition, Table 7.4 states minimum distances for non-domestic access onto the Protected Regional Routes, which the proposed development has not significantly justified. Therefore, it is considered that having regard to the intensification of traffic movement and restricted capacity of the access the proposed development would endanger public safety by reason of traffic hazard.

4. The site is located within an area with a ground water classification of "Extreme" and "x" where rock is near the surface or karst and is c. 120m from the edge of Carlingford Lough SAC (site code 002306). The proposed development includes the retention of a change of use of a dwelling for self-catering accommodation for c. 15 persons. The proposal does not include any site characterisation test or satisfactory proposals to treat the additional loading on the site, therefore it is not considered the proposed development would lead to groundwater and surface water pollution within a water sensitive location and would, therefore, be prejudicial to public health.

5. The subject site is located on an elevated site above the R173, Greenore to Carlingford. Policy WS 10 of Louth County Development Plan 2015-2021 requires the incorporation of Sustainable Urban Drainage Systems (SuDS) in all developments. The proposed development fails to demonstrate how surface water disposal can be managed to minimise storm water by the incorporation of SuDS and therefore, it is considered the proposed development would lead to increase surface water run off within a water sensitive location and would, therefore be contrary to the proper planning and sustainable development of the area.

Karen Hamilton
Planning Inspector

04th of February 2019