



An  
Bord  
Pleanála

## Inspector's Report

**ABP-303746-19**

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<b>Development</b>	Retention of unauthorised mobile home and all associated site works
<b>Location</b>	Ballymorris, Portarlinton, Co.Laois
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	18714
<b>Applicant</b>	Catherine McCann
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party – v - Grant
<b>Appellant</b>	Ballenline Ltd.
<b>Date of Site Inspection</b>	5 <sup>th</sup> , June 2019
<b>Inspector</b>	Paddy Keogh

## 1.0 Site Location and Description

- 1.1. The site of the proposed development, which has a stated area of .79 acres, is located at Ballymorris, Co. Laois. The site is irregular in shape and contains a detached bungalow, outbuildings and a mobile home (the subject of the current appeal).
- 1.2. The existing bungalow on site fronts onto the Regional Road (R419) at a point c. 3km south-west of Portarlinton. There is an amenity green space on the opposite side of the R419 containing a feature stone bridge. This bridge crosses over a section of a now redundant (and filled in) old canal route.
- 1.3. An unsurfaced private laneway runs along the southern boundary of the site and extends in a south-westward direction from the R419. The laneway which terminates in a cul-de-sac serves the rear of the subject site, an adjoining dwelling, an industrial/warehouse type building and adjacent farmland.

## 2.0 Proposed Development

- 2.1. The proposed development involves the retention of a mobile home (stated floor area of 44 sq.m.). It is proposed to use the mobile home for study space and storage accommodation only.

## 3.0 Planning Authority Decision

### 3.1. Decision

Notification of a decision to grant planning permission for the proposed development subject to 7 conditions was issued by the planning authority per Order dated 22<sup>nd</sup>, January 2019.

Condition No. 2 of the grant of planning permission states:

- (a) The proposed development shall be used only as a study area by the applicant or by members of her immediate family and be incidental to the enjoyment of the dwelling house on the development site and for no other purpose. No business, trade or commercial activity of any kind whatsoever, shall take place from the proposed development. Neither shall it be used for human habitation.
- (b) The proposed development shall not be connected to the existing on-site septic tank drainage system.

(c) No material change of use shall take place without prior planning permission.

**Reason:** In the interest of the proper planning and sustainable development of the area.

Condition No. 6 of the grant of planning permission states:

The subject development shall be permitted for a period of 3 no. years only from the date of grant of this permission. Prior to expiry of the permission, the use shall cease and the structure shall be permanently be removed form the site unless a subsequent planning application to retain again has been granted by the Planning Authority.

**Reason:** In the interests of proper planning.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

A report from the planning authority Senior Executive Planner dated 21<sup>st</sup>, January 2019 includes:

- The site of the proposed development is located within an 'Area Under Strong Urban Influence' as designated in the rural housing policy of the Laois County Development Plan 2011-2017'. Rural housing policy as set out in Section 2 of the Development Plan is not applicable in the context of the proposed development.
- The site is located outside the confines of the critical flood zones A and B as indicated in the Strategic Flood Risk Assessment of the County Development Plan.
- There are no Natura 2000 sites at or in close proximity to the application site.
- The local housing stock is mixed in terms of design, type, age and style.
- (Insofar as could be determined) the mobile home is not connected to the existing mobile home on site.
- Surface water is collected and disposed of to soakpits.
- Access is onto an unsurfaced cul-de-sac laneway which joins with the R419 at a junction c. 35 m. to the north-east.

- Given its limited size and usage as a studio, the proposed development involving the retention of a mobile home is considered to be acceptable to the Planning Authority on this occasion.
- The planning authority completed a screening exercise for Appropriate Assessment and concluded that the proposed development would not be likely to have a significant effect on any Natura 2000 site in light of the sites' conservation objectives

The planning authority decision is in accordance with the recommendation of the Senior Executive Planner.

### **3.3. Third Party Observations**

- 3.3.1. A submission from a third-party observer objects to the proposed development on a number of grounds. The grounds of objection are similar to those contained within the submitted grounds of appeal.

## **4.0 Planning History**

- 4.1.1. There is no record of recent planning history pertaining to the subject site.

## **5.0 Policy Context**

### **5.1. Development Plan**

The application site is located within a rural area designated as being 'Under Strong Urban Influence' in the Laois County Development Plan 2011-2017.

Appendix 7 of the Development Plan includes guidance on good siting and sensitive design for one-off houses in rural areas.

### **5.2. Natural Heritage Designations**

The River Barrow and River Nore Special Area of Conservation (SAC) (Site Code 2161) is located c. 450m to the north of the appeal site.

Clonreher Bog NHA (Site Code 002357) is located c. 12km south-west of the subject site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The submitted grounds of appeal include:

- The appellants (Ballenline Ltd.) are the owners of lands accessed via a right of way over the private laneway which provides vehicular access to the appeal site.
- The mobile home that is the subject of the current appeal is visible from the private laneway running to the south of the site.
- The mobile home is partially visible from the R419 and the tourist picnic area on the opposite side of the R419 to the appeal site.
- The erection of a single site notice in respect of the proposed development does not comply with statutory requirements. A notice must be erected at or near all entrances where a site has more than one entrance.
- No planning permission has been sought in respect of the retention of the vehicular entrance to the south of the site. (There was only an agricultural gate in-situ prior to the construction of the new vehicular entrance). The application should have been invalidated - the entrance cannot be relied upon as part of the current application.
- The description of the proposed development contained in the submitted public notices is as a 'mobile home'. If the development is not intended for use as a mobile home, then the description is misleading.
- Evidence of written consent to use the private laneway serving the site has not been submitted.
- The Planner's report refers to the use of the mobile home as a study room and for storage purposes only. However, this intended use is not explicitly stated anywhere in the submitted documentation.
- The appellant believes that the proposed development is intended for use as a habitable dwelling.
- The application form indicates that the proposed wastewater management/treatment is to an existing conventional septic tank.

- Mobile homes are an incongruous feature in the Irish rural landscape arising from the fact that they do not reflect traditional rural design principles.
- There are a significant number of precedent cases where the Board has refused planning permission for mobile homes due to the detrimental visual impact of such structures.
- The applicant has failed to submit a Stage 1 Appropriate Assessment screening despite the fact that the site is located only c. 500m. from the River Barrow and River Nore SAC.

## 6.2. Applicant Response

A submission on behalf of the applicant dated 20<sup>th</sup>, March 2019 includes:

- The principle function of a site notice is to inform the public in relation to a proposed development. It appears that the site notice served its function in relation to the proposed development.
- The site has always been served by an agricultural entrance. This entrance was widened on a temporary basis to allow delivery of the mobile home to the site. The applicant is in the process of making arrangements for the reinstatement of the previously existing agricultural entrance and for reinstatement of the original fence and planting.
- The term 'mobile home' has been used to describe the proposed development in keeping with convention. Other terminology would be misleading. There is nothing to stipulate that a 'mobile home' is exclusively intended for use as a place of residence. Use as a study is acceptable.
- The applicant does not require any further legal consent over the private laneway to the south of the site to allow for the benefit of access to the mobile home. The mobile home can be accessed directly via the existing house and garden. (95% of the traffic along the private laneway is generated by the appellant's agricultural, electrical and associated retail business).
- The existing dwelling on site was built in the 1850's. Rooms are relatively small and unsuitable to accommodate a study. The applicant's daughter is pursuing third level courses and requires a reasonable amount of space for study and the storage of materials.

- The 'mobile home' that it is proposed to retain is not connected to the septic tank on site.
- The development has been permitted for a period of three years only. It is not intended as a permanent structure and is intended purely to facilitate the applicant's daughter during her studies.
- Given the nature of the development, the distance to the nearest Natura 2000 site and the absence of a foul connection it is fair to imply no negative consequences for the plant or animal species for which an appropriate assessment would be required.
- The 'mobile home' will only be accessed from the existing dwelling. No additional traffic will be generated by the proposed development.

### **6.3. Planning Authority Response**

- 6.3.1. A submission from the planning authority per email dated 1<sup>st</sup>, April 2019, indicates that the planning authority has no comments to make in relation to the submission dated 20<sup>th</sup>, March 2019 lodged on behalf of the applicant.
- 6.3.2. No response was received from the planning authority in relation to the submitted (third party) grounds of appeal.

### **6.4. Further Responses**

A further submission dated 11<sup>th</sup>, April 2019 on behalf of the appellant, includes:

- The site notice must be erected in accordance with statutory requirements.
- The applicant acknowledges that works were carried out to the vehicular entrance. The agent does not clarify whether or not that entrance had the benefit of planning permission in the first instance.
- The appellant continues to have grave concerns that the mobile home will be used as a residence in the future.
- A structure does not have to be a permanent structure to have an adverse impact on the visual amenities of a rural area.
- The appellant remains concerned about the impact of the proposed development on the River Barro and River Nore SAC.

- The private laneway to the south of the appeal site is used regularly by the appellant for the transport of agricultural machinery such as sowers, plough, tillers, large agricultural fertiliser and grain trucks, combine harvesters etc. The manner in which the applicant parks cars at the entrance to the laneway regularly impedes access to the appellants property.

## 7.0 Assessment

7.1. The key issues arising out of the current appeal are as set out below. The issue of Appropriate Assessment also needs to be addressed.

- (1) Use
- (2) Septic Tank
- (3) Access
- (4) Procedural Matters
- (5) Appropriate Assessment

### 7.2. Use

The submitted grounds of appeal argue that the proposed development involves the retention of a mobile home for use as a place of residence. It is submitted that the site is unsuitable to accommodate such a use for a variety of reasons including the unsuitability of the design of the structure and its visual impact on the surrounding area.

- 7.2.1. A submission on behalf of the applicant, in response to the submitted grounds of appeal, clarifies that the 'mobile home' will be retained purely for use as a study and storage area to be used by the applicant's daughter while she completes a third level course of study. The applicant has confirmed that the accommodation will not be used as a place of residence and will only be used as accommodation ancillary to (and accessed via) the principal dwelling on site.
- 7.2.2. I see no reason to doubt the applicant's claim that the mobile home will be used solely to provide study space and storage accommodation. The applicant has indicated that the accommodation is required for a limited period only while the applicant's daughter completes her studies. On balance, I consider that the proposed



use is acceptable and would not seriously injure the amenities of the area subject to a number of safeguards including the attachment to any grant of planning permission of appropriately worded conditions restricting the retention of the development to a temporary period of three years only, restricting the use of the mobile home to study and storage use only and a requirement to provide supplementary screen planting along the southern boundary of the site..

7.2.3. The grounds of appeal argue that planning permission has been sought for the retention of a 'mobile home' and that the term 'mobile home' implies use as a residence. However, I would tend to accept the assertion on behalf of the applicant, in response, that the term has been used in this instance merely because the term mobile home has a conventionally recognised meaning, but does not preclude the option of using such a structure in the manner currently being proposed (i.e. purely as accommodation ancillary to the principal dwelling and not as a residence provided with separate cooking accommodation, overnight sleeping accommodation and bathroom accommodation).

### 7.3. Septic Tank

Despite concerns to the contrary on the part of the appellant, the applicant has expressly stated in documentation on file that the mobile home proposed for retention is not connected to the on-site septic tank serving the existing dwelling on site. As the structure will not be used as a separate residence to the existing dwelling and will only be used to provide ancillary accommodation there will be no requirement for separate bathroom accommodation etc. In order to restrict the use of the proposed mobile home to the intended use and to prevent unauthorised use of the structure I consider that a condition should be attached to a grant of planning permission prohibiting a connection being made to the existing septic tank.

### 7.4. Access

The submitted grounds of appeal refer to alleged unauthorised widening of the entrance to the site from the private laneway that runs to the south of the site in order to facilitate the delivery of the mobile home. It has been submitted on behalf of the applicant, in response, that any such works were of a temporary nature. Furthermore, the applicant is in the process of arranging for the reinstatement of the previously existing agricultural entrance to the site from the laneway.

7.4.1. Enforcement action in respect of unauthorised works, if any, undertaken in order to facilitate the delivery of the mobile home are a matter for the planning authority in the first instance. I consider that the matter raised by the appellant in this regard is of a minor nature and would not preclude the granting of planning permission in this instance.

#### 7.5. Procedural Matters

The submitted grounds of appeal argue that the application (in respect of which a single site notice has been erected) does not comply with the statutory requirement that site notices be erected at each entrance to the site where there is more than one site entrance. However, I note that in the current instance one of the entrances to the site is via a private laneway to which the public do not have unrestricted access. Furthermore, there is no evidence on file to suggest that members of the public were prejudiced in any way as a consequence of the manner in which the public site notice was displayed. In these circumstances, I consider that the site notice has adequately served its statutory function.

#### 7.6. Appropriate Assessment

Having regard to the nature and small scale of development proposed (including the lack of effluent generation), the distance between the proposed development and the nearest Natura 2000 site, and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on any European site.

## 8.0 Recommendation

8.1. I recommend that planning permission for the proposed development be granted for the reasons and considerations and subject to the conditions as set out below.

## 9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development and to the character and pattern of development in the vicinity of the site it is considered that, subject to compliance with the conditions as set out below, the proposed development would not seriously injure the amenities of property in the vicinity of the site, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health and would 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 prior to commencement of development and the development shall be retained and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

- (2) This permission shall be for a period of three years from the date of this order, unless prior to the expiry of such period planning permission for the retention of the development for a further period shall have been granted by the planning authority or by An Bord Pleanála.

**Reason:** In order to facilitate the monitoring of the impact of the proposed development and to allow for the further assessment of the impact of the development on the amenities of the area in light of the circumstances prevailing at the end of this three-year period.

- (3) The development shall be retained solely for use as study and storage room accommodation ancillary to the dwelling on site. It shall not be used as a place of temporary or permanent residence nor shall it be used for the provision of overnight accommodation. It shall not be used for the carrying out of any business, trade or other commercial activity and shall not be sold on or sublet separate to the dwelling without a prior grant of planning permission having been obtained.

**Reason:** In the interest of clarity and to prevent over-intensification of use of the site.

- (4) The development to be retained shall not be connected to the existing on-site septic tank drainage system.

**Reason:** In the interest of public health and to prevent unauthorised use of the development.

- (5) Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.

**Reason:** To ensure a proper standard of development in the interests of the proper planning and sustainable development of the area.

- (6) The original agricultural entrance to the site from the private laneway running to the south of the site shall be re-instated and the entrance and southern boundary shall be completed and landscaped in accordance with a scheme of supplementary boundary planting and landscaping details of which shall be submitted to and agreed to in writing with the planning authority within 3 months of the date of this order. The agreed scheme shall include a timeframe for its implementation and arrangements for re-planting in the event that initial planting fails.

**Reason:** In order to prevent over-intensification of use of the access from the private laneway running along the southern boundary of the site and in the interests of visual amenity.

- (7) The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within 3 months of the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

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Paddy Keogh

Planning Inspector

12<sup>th</sup>, June 2019