



An
Bord
Pleanála

Inspector's Report ABP-305014-19

Development

Retention of the following alterations to existing Bed & Breakfast accommodation 1. Porch to the side on northern elevation 2. Extension to rear western elevation consisting of kitchen, store / toilet 3. Extension to the southern elevation consisting of an additional bedroom and laundry facilities 4. Permission for improvements to roadside entrance and associated works.

Location

Abhainn Rí, Ballintober, Hollywood, Co. Wicklow.

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

19342

Applicant(s)

Joseph & Niamh Byrne

Type of Application

Permission & Permission for Retention

Planning Authority Decision

Grant subject to conditions

Type of Appeal

Third Party v. Decision

Appellant(s)	Michael Kelly
Observer(s)	None.
Date of Site Inspection	10 th October, 2019
Inspector	Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located in the rural townland of Ballintober, Co. Wicklow, approximately 2.4km northeast of the village of Hollywood and 5.2km southeast of Ballymore Eustace, where it occupies a position along the eastern side of Local Road No. L-8347 overlooking the Blessington Lakes / Poulaphouca Reservoir to the east. The surrounding landscape is primarily one of undulating rural countryside with intermittent instances of one-off housing and agricultural outbuildings although there are notable views available over the Blessington Lakes and towards the Silsean and Moanbane mountains.
- 1.2. The site itself has a stated site area of 0.895 hectares, is irregularly shaped, and is presently occupied by the 'Abhainn Rí' holiday cottages (2 No. pairs of semi-detached holiday lets) in addition to a two-storey, three-bay, former farmhouse (presently in use as 'Bed & Breakfast' / holiday accommodation) which has been extended to the side and rear. It is set below the level of the adjacent public road with the topography falling eastwards towards the reservoir whilst the intervening lands are in agricultural use. Access is obtained via two independent entrance arrangements which serve the existing farmhouse and the holiday cottages respectively. The roadside boundary to the rear of the farmhouse is presently defined by well-maintained, mature hedgerow whilst that section fronting the holiday homes comprises timber post and rail fencing. The remaining perimeter site boundaries are generally defined by a combination of hedging, fencing and several mature tree specimens. Adjoining lands are in agricultural use whilst there is a farmyard and associated outbuildings situated on the opposite side of the public road.

2.0 Proposed Development

- 2.1. The proposed development involves the retention of a series of extensions (total floor area: 74m²) to the side and rear of the existing 'Bed & Breakfast' farmhouse accommodation as follows:
 - A single storey porch / reception area on the northern gable elevation.

- A single storey extension to the rear of the property to provide for a new kitchen, storage area, and sanitary facilities.
- An 'L'-shaped, single storey extension to the southern gable elevation consisting of an additional ensuite bedroom and a new laundry room.

2.2. Permission has also been sought for improvements to the existing entrance arrangement serving the 'Bed & Breakfast' accommodation through the recessing of the roadside boundary in addition to associated site development works.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Following the receipt of a response to a request for further information, on 4th July, 2019 the Planning Authority issued a notification of a decision to grant permission & permission for retention of the proposed development subject to 5 No. conditions which can be summarised as follows:

Condition No. 1 - Refers to the submitted plans and particulars.

Condition No. 2 – Requires the existing Bed & Breakfast / dwelling house and the proposed extension to be jointly occupied as a single unit.

Condition No. 3 – Requires the roadside boundary to be set back within 6 No. months of the date of the grant of permission.

Condition No. 4 – Refers to surface water drainage.

Condition No. 5 – Refers to the potable water supply.

3.2. Planning Authority Reports

3.2.1. Planning Reports

An initial report notes that the subject site forms part of the 'Abhainn Rí' self-catering holiday accommodation and states that the conversion of the former farmhouse into a 'Bed & Breakfast' was carried out as exempted development pursuant to Article 10(4) of the Planning and Development Regulations, 2001, as amended. It is further noted that whilst permission was previously refused on site on the basis that the

retention of the works in question would have served to consolidate an unauthorised development (in reference to the operation of a restaurant / event venue without the benefit of permission), the applicant has submitted that the subject proposal is materially different as it has been clarified that the 'Bed & Breakfast' is not being used as a restaurant and that the dining room is used only by guests of the farmhouse and the holiday cottages. It is subsequently stated that the design of the extensions proposed for retention is in keeping with the character of the property and will not give rise to any negative visual impact (in light of the site location in an Area of Outstanding Natural Beauty and alongside a view listed for preservation in the Development Plan) whilst the proposals to improve the availability of sightlines at the site entrance are also acceptable. The report thus concludes by recommending a grant of permission, subject to conditions, pending the receipt of comments from the Environmental Health Officer.

Following the receipt of a response to a request for further information pertaining to the wastewater treatment arrangements, a final report was prepared which recommended a grant of permission, subject to conditions.

3.2.2. *Other Technical Reports*

Water & Environmental Services: No comments as no new connections are required.

Roads: States that whilst the submitted proposal will not achieve sightlines of 60m to the south when measured to the near edge of the carriageway, the works proposed will improve overall visibility, although consideration should be given to the relocation of an additional section of roadside boundary hedgerow in order to further improve the available sight distance.

Environmental Health Officer: A series of reports has concluded that the existing wastewater treatment arrangements would appear to have sufficient capacity to cater for the proposed development and would require a Discharge Licence under the Water Pollution Acts. It is also recommended that a condition be imposed in any decision to grant permission as regards compliance with the Drinking Water Regulations, 2017.

3.3. **Prescribed Bodies**

- 3.3.1. *Dublin City Council:* No objection as regards the minimisation of pollution threats to the Poulaphouca Reservoir.

3.3.2. *Department of Culture, Heritage and the Gaeltacht*: States that the proposed development, which involves alterations to a Victorian farmhouse, has the potential to disturb the roosting / breeding habitat of a bat species listed under Annex IV of the EU Birds Directive. Accordingly, in order to mitigate this potential impact, it is recommended that the following condition be imposed in the event of a decision to grant permission:

- A bat survey should be carried out by a suitably qualified ecologist prior to any works.
- If the presence of a bat roost is confirmed a derogation licence issued by the Department will be necessary prior to any works being carried out that may affect the roost.

3.4. **Third Party Observations**

3.4.1. A single submission was received from the appellant, the contents of which are reiterated in the grounds of appeal.

4.0 **Planning History**

4.1. *On Site*:

PA Ref. No. 988122 / ABP Ref. No. PL27.107812. Was granted on appeal on 4th March, 1999 permitting Joseph and Niamh Byrne permission for the construction of 4 No. semi-detached holiday cottages, septic tank with Puraflo effluent treatment system and percolation area, and connection of existing farmhouse.

PA Ref. No. 081411 / ABP Ref. No. PL27.233740. Was refused on appeal on 11th January, 2010 refusing Joe and Niamh Byrne permission for the extension of the existing 'Abhainn Rí' self-catering agri-tourism accommodation facility and provision for agri-tourism specialist activities for the following: (1) recreational building which will contain a multi-purpose room, reception area, office, toilets, kitchen and laundry room with lofted storage over part in Block A; (2) 2 No. dormer type three bedroom self-catering units and 1 No. single storey three bedroom self-catering unit in Block B; (3) 1 No. single storey three bedroom self-catering unit and 3 No. traditional handcraft units in Block C; (4) extension to existing wastewater treatment system to cater for all of the above additions; (5) 4 No. stable type farm buildings, dungstead

and effluent holding tank for the keeping of 'rare breed' farm animals (to interact with the overall facility) in Block D; (6) extension of roadway through the existing 'Abhainn Rí' facility to cater for the above development extension and provision of additional car parking; (7) provision of designated play area and (8) all associated site works including paths, paved areas, seats and bin storage and planting.

- The proposed agritourism accommodation comprising a substantial development of new buildings removed from any existing farm activities on a Greenfield elevated and exposed site around the Poulaphuca Reservoir would be visually obtrusive and would detract from the visual amenities of a designated Area of Outstanding Natural Beauty and the Prospect of Special Amenity Value or Special Interest eastwards towards the Lakes and Moanbane mountain. The proposed development would, therefore, seriously detract from the visual amenities of the area, be contrary to the provisions of the Wicklow County Development Plan 2004-2010 and be contrary to the proper planning and sustainable development of the area.
- Having regard to the scale and intensity of development proposed to be served by a waste water treatment system in proximity to Poulaphuca Reservoir, a Regional Water Supply, the Board is not satisfied that the proposed development would not be prejudicial to public health.

PA Ref. No. 102833. Was granted on 17th January, 2011 permitting Joe & Niamh Byrne permission for alterations and extensions (407sqm) to existing farmhouse (97sqm), change of use of same to incorporate 5 bedroom guesthouse and 2 no. self-catering units; new upgraded effluent treatment system in lieu of existing treatment system, all together with associated site works.

PA Ref. No. 181141. Was refused on 30th November, 2018 refusing Joe & Niamh Byrne permission for alterations to a house with existing bed and breakfast accommodation, porch to the side of northern elevation, extension to the rear western elevation consisting of kitchen, store / toilet, extension to the southern elevation consisting of an additional bedroom and laundry facilities and associated works.

- The proposed development would represent consolidation of un-authorised development on this site, having regard to the existing use on site as a

restaurant / venue for which no permission exists, the provision of such a form of development unduly impacts on the amenities of the area, public health, the amenities of adjoining properties, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area.

- Having regard to:
 - a) The existing road network serving the site which is deficient with respect to width and alignment,
 - b) The restricted sightlines at the existing entrance serving the site,

It is considered that the additional traffic movements generated by this development as it currently operates would endanger public safety by reason of a traffic hazard.

- The proposed development would be prejudicial to public health because no evidence has been provided to show:
 - a) The existing septic tank and percolation area is designed and sized appropriately to cater for additional loading generated.
 - b) The water supply is compliant with the Drinking Water Regulations 2014.

4.2. *On Adjacent Sites (to the immediate south):*

PA Ref. No. 065164 / ABP Ref. No. PL27.220863. Was refused on appeal on 10th May, 2005 refusing Joseph and Niamh Byrne permission for 2 No. semi-detached tourism self-catering units as an extension to existing four units and extension to septic tank and puraflo effluent treatment system and percolation area at Ballintober, Hollywood, Co. Wicklow.

- The proposed development to construct a pair of semi-detached holiday homes on an elevated site around the Poulaphuca Reservoir would be visually obtrusive and would detract from the visual amenities of a designated Area of Outstanding Natural Beauty and the Prospect of Special Amenity Value or Special Interest eastwards towards the Lakes and Moanbane mountain. The proposed development would, therefore, seriously detract from the visual amenities of the area, be contrary to the provisions of the Wicklow

County Development Plan, 2004-2010 and be contrary to the proper planning and sustainable development of the area.

- Table 11.1 of the Wicklow County Development Plan, 2004-2010 contains a Tourism Land Use matrix which states that Holiday Homes are not permissible in Areas of Outstanding Natural Beauty. The application site is located in a designated Area of Outstanding Natural Beauty. The Board considers that the proposed development constitutes a holiday home development, that the objective to protect Areas of Outstanding Natural Beauty from inappropriate development including holiday homes is reasonable and that the proposed development does not warrant an exception to this objective. The proposed development would, therefore, contravene a development objective indicated in the Development Plan and be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. Development Plan

5.1.1. ***Wicklow County Development Plan, 2016-2022:***

Chapter 7: Tourism and Recreation:

Section 7.4: Tourism and Recreation Objectives:

T3: To generally require tourism and recreation related developments to locate within existing towns and villages, except where the nature of the activity proposed renders this unfeasible or undesirable. Within existing towns and villages, the Planning Authority will promote and facilitate the development of tourist related uses at appropriate sites. In all cases, the applicant must submit a robust assessment setting out the sustainability of any proposal with respect to economic, environmental and social sustainability, as defined herein.

T4: To only permit the development of a tourism or recreational facility in a rural area in cases where the product or activity is dependent on its location in a rural situation and where it can be demonstrated that the proposed development does not adversely affect the character, environmental quality

and amenity of the rural area or the vitality of any settlement and the provision of infrastructure therein. The natural resource / tourist product / tourist attraction that is essential to the activity shall be located at the site or in close proximity to the site, of the proposed development. The need to locate in a particular area must be balanced against the environmental impact of the development and benefits to the local community.

T6: To ensure that tourism and recreation related developments are appropriately located in the County. Subject to the following exceptions, all tourist and recreation related developments are 'open for consideration' in all landscape areas:

- The following tourist uses will not be permitted within the Area of Outstanding Natural Beauty (both the Mountain Uplands Area and the Coastal Area): Static caravans and mobile homes;
- Holiday homes will not be permitted in any landscape category other than urban zones except where they comply with objectives T13, T14 and T15.

T10: To facilitate the development of a variety of quality accommodation types, at various locations, throughout the County.

T12: To positively consider the (part) conversion of existing dwellings to Bed & Breakfasts (B&Bs) and Guesthouses, to be operated by the owner-occupier of the dwelling. Applications for new build B&Bs / guesthouses will in the first instance be evaluated as private dwellings and the objectives and standards applicable in that area type (e.g. large town, rural town, rural area etc) will be applied.

T13: To require new holiday home / self-catering developments to locate within either established settlements or at established tourism / recreation facilities, other than those developments involving the renovation / conversion of existing buildings.

T18: To give sympathetic consideration to the improvement of, and extension to, existing tourist accommodation related developments, subject to the proper

planning and sustainable development of the area, and subject to compliance with all other objectives of this plan.

Chapter 10: Heritage:

Section 10.3.9: Wicklow's Landscape:

1. The Mountain and Lakeshore Area of Outstanding Natural Beauty:

1(b) - The Poulaphuca Reservoir:

This category generally relates to the area around Blessington known locally as the 'Blessington Lakes' and extends into Sorrell Hill. The lakes area is dominated by the lake, views onto and from the lake. To the east and south, land is more mountainous with attractive views and vegetation.

NH49: All development proposals shall have regard to the County landscape classification hierarchy in particular the key landscape features and characteristics identified in the Wicklow Landscape Assessment (set in Volume 3 of this plan) and the 'Key Development Considerations' set out for each landscape area set out in Section 5 of the Wicklow Landscape Assessment

NH50: Any application for permission in the AONB which may have the potential to significantly adversely impact the landscape area shall be accompanied by a Landscape / Visual Impact Assessment, which shall include, inter alia, an evaluation of visibility and prominence of the proposed development in its immediate environs and in the wider landscape, a series of photos or photomontages of the site / development from clearly identified vantage points, an evaluation of impacts on any listed views / prospects and an assessment of vegetation / land cover type in the area (with particular regard to commercial forestry plantations which may be felled thus altering character / visibility). The Assessment shall demonstrate that landscape impacts have been anticipated and avoided to a level consistent with the sensitivity of the landscape and the nature of the designation.

Section 10.3.10: Views and Prospects:

NH52: To protect listed views and prospects from development that would either obstruct the view / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect. Due regard will be paid in assessing development applications to the span and scope of the view / prospect and the location of the development within that view / prospect.

Schedule 10.15: Prospects of Special Amenity Value or Special Interest:

No. 22: L8347 Ballintober: Prospect eastwards of Lakes and Moanbane mountain.

Appendix 1: Development and Design Standards:

*Appendix 2: Single Rural House Design Guidelines: Section 4: Ancillaries:
Extensions to Existing Rural Houses*

Appendix 5: Landscape Assessment:

Section 5.3.3: The Poulaphuca Reservoir KDC:

1. To protect listed views / prospects and to resist development proposals that would negatively impact on the skyline and other key vantage points in the area, in particular views from the Lake Drive down to and across the reservoir and to the west towards the mountains.
2. Development proposals within this area should aim to locate within existing clusters of structures / tree stands and avoid locating new development in open fields.
3. Development proposals surrounding the reservoir should respect the more traditional and vernacular building patterns and materials of the area. A particular emphasis on the more traditional built and vernacular form will be applied within the Ballyknockan and Lackan area where developments should be of a design which assimilates easily into the existing landscape.
4. To support and facilitate the provision of amenity routes around the Phoulaphuca reservoir in a manner which does not detract from the scenic nature of the area and ensure that new development is sited in such a manner that would not interfere with existing or potential amenity routes.

5. To maintain the favourable conservation status of existing natural habitats within or surrounding the Poulaphuca Reservoir.

5.2. Natural Heritage Designations

5.2.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The Poulaphuca Reservoir Special Protection Area (Site Code: 004063), approximately 800m east of the site.

5.3. EIA Screening

5.3.1. Having regard to the minor nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, and the separation distance from the nearest sensitive location, 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.

6.0 The Appeal

6.1. Grounds of Appeal

- The works in question constitute unauthorised development, the retention of which has already been refused permission under PA Ref. No. 18/1141.
- The local road network serving the subject site and surrounding lands is substandard in terms of alignment, width and overall condition whilst the limited availability of opportunities for two vehicles to pass side-by-side has given rise to repeated instances of traffic congestion and unsafe / problematic reversing movements. Therefore, there are concerns that the development proposed for retention will serve to exacerbate these difficulties.
- The subject proposal would represent the consolidation of an unauthorised development by reference to the operation of a restaurant / venue use on site

without the benefit of planning permission. Any such development would unduly impact on the amenities of the area and adjoining properties, would be prejudicial to public health, and would be contrary to the proper planning and sustainable development of the area.

- Visitors to the existing holiday accommodation have given rise to difficulties as regards the infringement of the appellant's privacy and interference with his farming practices by way of unauthorised access / trespass on his lands and a failure to secure farm / field gates.
- It is queried how the applicants were eligible for funding under the 'Diversification into Non-Agricultural Activities' measures of the Rural Development Programme, 2007-2013 in the absence of the necessary planning permission. They constructed extensions and changed the use of rooms without permission in order to provide for a restaurant and additional bedrooms (with the website advertising 3 No. bedrooms available within the old farmhouse).
- There are concerns that any grant of permission for the retention of the subject proposal will set a precedent for further unauthorised development on site in the absence of any improvements to the local road access.
- The subject site is in an Area of Outstanding Natural Beauty characterised by scenic views throughout and the additional development proposed will detract from the appreciation of these amenities.
- The late-night socialising and other activities conducted by visitors to the existing holiday accommodation gives rise to excessive noise and disturbance with an associated loss of residential amenity experienced by the appellant.
- The existing septic tank on site is emptied once a year by a local farmer and its contents spread on the farmland. This practice should not be permitted by the Local Authority, particularly given the proximity of Poulaphouca Reservoir.
- The existing septic tank is of a blockwork construction only and was not upgraded to cater for the loadings arising from additional guests / usage.

6.2. Applicant Response

- Having regard to the planning history of the site and the small scale of the extensions proposed for retention, it is considered that the matters raised in the grounds of appeal are minor and that the Board should dismiss the appeal (pursuant to the provisions of Section 138(1) of the Planning and Development Act, 2000, as amended) on the basis that it is 'vexatious' and 'frivolous'.
- In response to concerns raised by the Planning Authority in its determination of PA Ref. No. 18/1141, the subject application includes proposals to improve visibility at the site entrance by setting back the roadside boundary hedge. These works, if permitted, will provide for sightlines of 60m along a lightly trafficked local road and will also serve to improve traffic and public safety.
- The case planner has confirmed that the existing local roadway is in a reasonable condition and that the works proposed will improve visibility at the site entrance.
- The development proposed for retention (i.e. the provision of one additional bedroom) will not give rise to any material increase in traffic generation / volumes along the local road.
- The farmhouse was converted into 'Bed & Breakfast' accommodation by way of exempted development pursuant to Article 10(4) of the Planning and Development Regulations, 2001, as amended, on the basis that the use is limited to 2 No. bedrooms at present and 3 No. bedrooms as proposed. The report of the case planner has clearly confirmed that the existing 'Bed & Breakfast' use is exempted development and is not unauthorised.
- It has already been clarified by the applicants that they have ceased the occasional use of part of the farmhouse as a café and all advertising / marketing regarding same has been removed from promotional material. The dining area within the farmhouse is now only for the use of guests and is ancillary to the existing 'Bed & Breakfast' / holiday cottages. It is not an unauthorised restaurant open to non-residents. Accordingly, other than those

elements proposed for retention as part of the subject application, there is no unauthorised development on site.

- The existing tourist accommodation and the ancillary use of the lands was approved in 1999 and has been in operation for 20 No. years. Any allegation as regards the conduct of persons viewing the appellant from along the public road is not a planning matter, although it is suggested that he could screen his farming activities if he so desired.
- The extensions proposed for retention are all modest in scale and in keeping with the character of the existing farmhouse. Furthermore, the entire development is substantially below the level of the public road and is surrounded by a shelter belt of trees. Accordingly, the proposal will not have any material impact on the visual amenities or scenery of the area.
- The existing effluent treatment system, which serves the 4 No. holiday cottages and the farmhouse, was approved under PA Ref. No. 98/8122 and consists of a septic tank with Puraflo treatment units and a percolation area. The subject proposal only seeks to increase the loading on this system by one bedroom and in this respect it is submitted that the system is already successfully catering for the additional loading.
- The report prepared by Wastewater Technical Services Ltd. which has accompanied the planning application addresses the previous concerns of the case planner and the Environmental Health Officer. It has found that the existing wastewater treatment system can accommodate a loading of 50 P.E. and that the existing loading of 25 P.E. can be adequately treated. The report also determined that the percolation area of 57m² of intermittent peat filters was well in excess of the minimum required for the existing and proposed loadings.
- Neither Dublin City Council nor the Environmental Health Officer has objected to the continued use of the existing effluent treatment system.
- The proposed development has had regard to the provisions of the Wicklow County Development Plan which encourages agri-tourism in rural areas and involves the small expansion of an approved and successful enterprise that

contributes to the local rural economy. Such development is supported by the National Planning Framework and other national policy.

6.3. **Planning Authority Response**

None.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues raised by the appeal are:

- The merits of the third-party appeal
- The nature and principle of the proposed development
- Overall design and layout / visual impact
- Traffic implications
- Impact on residential amenity
- Wastewater treatment and disposal
- Appropriate assessment
- Other issues

These are assessed as follows:

7.2. **The Merits of the Third-Party Appeal:**

7.2.1. With regard to the applicant's request for the Board to dismiss the third party appeal pursuant to the provisions of Section 138(1) of the Planning and Development Act, 2000, as amended, on the basis that said appeal is '*vexatious*' and '*frivolous*', having

considered the grounds of appeal, I am satisfied that they raise legitimate material planning considerations and thus I propose to assess same accordingly

7.3. The Nature and Principle of the Proposed Development:

- 7.3.1. Concerns have been raised in the grounds of appeal that the development proposed for retention will consolidate unauthorised development on site by reference to the use of the existing farmhouse as 'Bed & Breakfast' accommodation and the alleged use of the dining area within same as a restaurant / events venue without the benefit of planning permission. In response, the applicants have asserted that the previous occasional use of part of the farmhouse as a café has ceased and that the dining area in question is now used solely by guests of the farmhouse and the adjacent holiday cottages in a capacity ancillary to the operation of the existing 'Bed & Breakfast' and overnight accommodation. It has also been submitted that the conversion of the farmhouse to 'Bed & Breakfast' accommodation was undertaken as exempted development pursuant to Article 10(4) of the Planning and Development Regulations, 2001, as amended, on the basis that said use is limited to 2 No. bedrooms at present and 3 No. bedrooms as proposed.
- 7.3.2. Having reviewed the available information, in my opinion, it is of relevance at the outset to determine whether or not the existing use of the farmhouse as a 'Bed & Breakfast' is authorised in order to establish a baseline by which to assess the subject development proposal. In this respect I would advise the Board that it is readily apparent from the documentation submitted in support of the planning application and appeal that all three of the bedrooms within the property in question are available as overnight accommodation for paying guests. This was further corroborated during the course of my site inspection and can also be confirmed from a review of the marketing material available on the publicly accessible website pertaining to the 'Abhainn Ri Farmhouse & Cottages'. Accordingly, there would seem to be no dispute between the various parties that the existing farmhouse operates solely as overnight guest accommodation.
- 7.3.3. Having established the current use of the farmhouse, it is necessary to ascertain its former use and in this regard it is notable that the applicants have placed a considerable emphasis on its change of use to overnight guest accommodation (on the basis that said use is limited to 2 No. bedrooms at present and 3 No. bedrooms

as proposed) as amounting to exempted development pursuant to Article 10(4) of the Planning and Development Regulations, 2001, as amended, which states the following:

'Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission'.

- 7.3.4. Therefore, it would seem reasonable to conclude that prior to its conversion to guest accommodation, the existing farmhouse was used for residential purposes as a private dwelling house. Notably, this would accord with the plans and particulars submitted in respect of PA Ref. No. 081411 / ABP Ref. No. PL27.233740 wherein the property in question was shown as an existing dwelling whilst PA Ref. No. 102833 (the most recent planning application on site unrelated to those works for which permission for retention has been sought) expressly identified the then use of the farmhouse as 'residential' and actually sought permission to change its use to a guesthouse.
- 7.3.5. At this point, and by way of clarity, it is clear that prior to its conversion to the current 'Bed & Breakfast' arrangement, the existing farmhouse was in use as a private residence. Moreover, the grant of permission issued in respect of PA Ref. No. 102833 was not implemented and has since expired with the result that no reliance can be placed on same as regards the existing use of the farmhouse.
- 7.3.6. The question thus arises as to whether the applicants are within their rights to rely on the exemption allowed under Article 10(4) of the Planning and Development Regulations, 2001, as amended, as regards the change of use of the farmhouse from a private dwelling to use for the sole purpose of providing overnight accommodation for paying guests.
- 7.3.7. In my opinion, any reliance on Article 10(4) of the Regulations as providing for the sole use of the subject property as commercial guest accommodation is misplaced. Notwithstanding that only 3 No. bedrooms within the farmhouse are used as overnight guest accommodation, the critical issue in that **all** of the bedrooms within

the farmhouse are used for such purposes. In effect, the property is no longer a 'house' as required by Article 10(4) but rather comprises a solely commercial enterprise.

- 7.3.8. Section 2(1) of the Planning and Development Act, 2000, as amended, defines a "house" as comprising '*a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied . . .*' whilst a "*habitable house*" is a house which is used as a dwelling. Although neither the Act nor the accompanying Regulations define "*dwelling*", a common dictionary definition is "*a building or place of shelter to live in; place of residence; abode; home*".
- 7.3.9. In light of the foregoing, I would suggest that direct parallels may be drawn between the subject change of use of the farmhouse from a private dwelling to exclusively overnight guest accommodation and the Board's determination of ABP Ref. No. PL29S.RL3490 wherein it was held that the use of a residential apartment for short term holiday lettings constituted development that was not exempted development. In that instance, it was noted that no one in the apartment was a resident, all were visitors, and thus the presence of a residential use has ceased to apply i.e. no one staying in the apartment lived there, resided there, or considered it their home or abode. Therefore, the apartment was no longer in use as a private residence but as short-term holiday letting accommodation.
- 7.3.10. It is my opinion that the circumstances of the subject property are broadly similar to those considered under ABP Ref. No. PL29S.RL3490 in that there is no resident hosting visitors in their own home, but rather the farmhouse is being used as overnight accommodation exclusively by visitors. In this respect I would suggest that the description of the existing accommodation as a 'Bed & Breakfast' facility is perhaps misleading given that the traditional and more commonly accepted definition of such a use would concern the oversight of paying guests, including the provision of 'Bed & Breakfast', in someone's home by the permanent resident of that dwelling house. Moreover, I would submit that the change of use of the farmhouse to exclusively overnight guest accommodation raises planning considerations that are materially different to those related to the use of the property as a private residence / dwelling house e.g. the extent and frequency of visitors / paying guests and servicing staff visiting the property, the potential for increased traffic generation, the loadings

on the effluent treatment system, and the fully commercial nature of the activity. The subject property is being used more intensively than heretofore and this use has changed the character of the previous residential use.

- 7.3.11. Similar to the Board's determination of ABP Ref. No. PL29S.RL3490, I am satisfied that the intensification of the use of the existing 'farmhouse' as exclusively overnight guest accommodation, and the differing needs and amenity expectations of visitors, as distinct from residents, lead to matters that differ from those that would arise under an assessment of the same property for residential use. By extension, the test for a material change of use has been met (*Monaghan County Council -v- Brogan*) i.e. the existing use of the farmhouse constitutes development. Moreover, as neither the Act nor the Regulations include any provision whereby the use of a dwelling house for exclusively overnight guest accommodation is exempted development it must be held that said use is not exempted development.
- 7.3.12. Therefore, in view of the unauthorised use of the existing farmhouse, and considering the ancillary relationship of the development proposed for retention with same, I am of the opinion that the proposal as submitted would serve to facilitate and extend the operation of an unauthorised development and therefore the Board is precluded from considering a grant of permission in this instance.
- 7.3.13. With regard to the alleged use of the dining area in the farmhouse as a restaurant / venue without the benefit of planning permission, I note that the applicants have asserted that any such use has ceased and that the area in question is now only used in a capacity ancillary to the operation of the existing 'Bed & Breakfast' and the adjacent holiday cottages. Whilst this would appear to be the case, on the basis that the existing use of the farmhouse constitutes unauthorised development, I would have concerns that any use of the dining area for purposes ancillary to same would also amount to unauthorised development.

7.4. Overall Design and Layout / Visual Impact:

- 7.4.1. The proposed development site is located within the highly scenic and visually sensitive landscape character area identified as '*The Mountain and Lakeshore Area of Outstanding Natural Beauty: 1(b) - The Poulaphuca Reservoir*' on Map No. 10.13(b) of the County Development Plan wherein there is a need to ensure that development proposals do not have an adverse impact on the landscape by

reference to Objective NH50 and the 'Key Development Considerations' set out in Section 5.3.3: '*The Phoulaphuca Reservoir*' of Appendix 5 of the Development Plan, including the requirement to preserve those views / prospects listed for protection, to resist development that would negatively impact on the skyline and other key vantage points in the area, and to ensure that development proposals surrounding the reservoir respect the more traditional and vernacular building patterns and materials of the area. In this respect, it is of particular relevance to note that the subject site also occupies a position to the east of Local Road No. L-8347 with the prospect from same towards the Blessington Lakes and Moanbane Mountain considered having been listed for protection in the Development Plan pursuant to Objective NH52 (i.e. Prospect No. 22: L8347 Ballintober).

7.4.2. The subject proposal provides for the retention of a series of single storey extensions to the side and rear of the existing 'Bed & Breakfast' and in this regard I am satisfied that the overall design and modest scale of the new construction is in keeping with the character of the existing farmhouse. Furthermore, whilst I would acknowledge that there are views eastwards of the reservoir from this elevated site and that the development may be visible in the distance from a number of vantage points to the east due to the sloping nature of the site, given the site context, including its siting below the level of the public road, the screening provided by the existing roadside boundary (and the proposed reinstatement of same), and the limited visibility of the proposal within longer range views from across the reservoir, in my opinion, the proposed development will not adversely detract from the scenic quality or visual amenity of the surrounding rural landscape.

7.5. Traffic Implications:

7.5.1. The 'Abhainn Rí' farmhouse accommodation is accessed via an existing entrance arrangement from the adjacent public road (independent of the adjacent holiday cottages), however, it is apparent that the alignment of the roadway at this location, when taken in combination with the obstruction caused by the roadside boundaries to either side of the access, serves to severely restrict the available sightlines and the visibility of on-coming traffic with the result that any vehicle attempting to exit the site is required to edge into the carriageway in order to gauge the presence of approaching traffic. In light of the foregoing, and in response to the earlier decision of the Planning Authority to refuse permission for the retention of the same

development under PA Ref. No. 181141, the subject proposal includes for the upgrading of the access through the recessing of the roadside boundary to either side of same, the removal of several trees, and the relocation of an existing telegraph pole, in order to provide for unobstructed sightlines of 60m in each direction (please refer to the site layout plan, Drg. No. 01 Rev. P1).

7.5.2. From a review of the submitted details, whilst I would concur with the assessment of the Roads Dept. of the Local Authority that the submitted proposals will not provide for unobstructed sightlines of 60m to the south when measured to the near edge of the carriageway, it is clear that the works proposed will nevertheless provide for a substantial improvement in overall visibility from the site access onto the public road and that the relocation of an additional section of the roadside boundary hedgerow as a condition of any decision to grant permission could serve to further improve the available sight distance. Accordingly, having regard to the established nature of the existing access, the limited traffic volumes and speeds along this section of rural roadway, and the sightlines available following the proposed upgrading works, I am amenable to the entrance improvements as submitted.

7.5.3. With regard to the wider traffic impact on the surrounding road network, whilst I would acknowledge the limited scale and nature of the development proposed for retention, cognisance must be taken of the fact that the subject proposal is ancillary to the operation of the unauthorised use of the farmhouse. Accordingly, I would suggest that the traffic impact of the subject proposal should be considered cumulatively in any assessment of the existing use of the farmhouse as overnight guest accommodation.

7.6. Impact on Residential Amenity:

7.6.1. Concerns have been raised in the grounds of appeal as regards the activities of some visitors to the existing holiday accommodation and their impact on the appellant's privacy and farm practices. In this respect, specific reference has been made to guests taking photographs / videos of the appellant from the roadway and instances of unauthorised access / trespass on his lands and a failure to secure farm / field gates. It has also been submitted that the late-night activities of some guests, such as singing and the playing of loud music, serves to disturb the residential amenity and enjoyment of the appellant's property.

- 7.6.2. Whilst I would acknowledge the legitimacy of the appellant's complaints as regards the conduct of certain guests, in my opinion, matters such as trespass and the taking of photographs from the public road are beyond the remit of the Board and are not directly relevant to the consideration of this appeal.
- 7.6.3. Furthermore, having regard to the nature and scale of the development proposed for retention and the separation distance from neighbouring housing, it is my opinion that the subject proposal would be unlikely to significantly detract from the amenities of adjacent property, although any instances of excessive noise or anti-social behaviour should perhaps be referred to the relevant authorities.

7.7. Wastewater Treatment and Disposal:

- 7.7.1. At present, the existing 'Bed & Breakfast' accommodation and the adjacent holiday cottages are served by a private wastewater treatment system comprising a septic tank, Puraflo unit, and percolation area, which was approved under PA Ref. No. 98/8122. Accordingly, the application has been accompanied by a condition report on this system which has confirmed that it is operating satisfactorily and has sufficient capacity to accommodate the additional loadings consequent on the proposed development in accordance with the requirements of the EPA's '*Wastewater Treatment Manual - Treatment Systems for Small Communities, Business, Leisure Centres and Hotels*'. I note that the Planning Authority is satisfied in this regard and has no objection to the proposed development on public health grounds.

7.8. Appropriate Assessment:

- 7.8.1. Having regard to the minor nature and scale of the development proposed for retention, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

7.9. Other Issues:

- 7.9.1. With respect to the recommendation of the Department of Culture, Heritage and the Gaeltacht that a bat survey be carried out in advance of any works, it should be noted that subject application is for retention and that the development under

consideration has already been completed and thus there is no need to impose the suggested condition.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the retention of the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. On the basis of the submissions made in connection with the planning application and the appeal, and following consideration of the planning history of the site, the Board is not satisfied that the use of the existing farmhouse for the purpose of providing exclusively overnight guest accommodation is authorised by a grant of planning permission, and given the ancillary nature of the development proposed for retention relative to this unauthorised development, it is considered that the development proposed for retention would facilitate the continued unauthorised use of the site. It would, therefore, be inappropriate for the Board to consider a grant of permission in such circumstances.

Robert Speer
Planning Inspector

21st October, 2019