



An
Bord
Pleanála

Inspector's Report

ABP-306930-20

Development	Retention of a private artist studio which replaced a derelict shed on the same site.
Location	Cloonlaheen Middle , Mullagh , Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	191005
Applicant(s)	Margaret & Thomas McMahan
Type of Application	Retention Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Margaret & Thomas McMahan
Observer(s)	None
Date of Site Inspection	22/07/2020
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located on the southern side of the local country road L6264. The road runs east from Mullagh, north of Doo Lough. The area is rural in nature, with large tracts of commercial planting and very sporadic rural housing. The topography of the area slopes southwards towards Doo Lough.
- 1.1.2. There is a single storey cottage with a narrow access to the lake, to the south of the studio to be retained. A fence around the cottage separates the cottage hardstanding from the adjoining fields. An entrance to the east of the cottage leads to the single storey structure to be retained. On the date of my site visit, I could not see a path or any other link between the two structures.

2.0 Proposed Development

- 2.1. On the 20th December 2019, permission was sought to RETAIN an artist's studio for private use of 45.93sq.m. that replaced a derelict shed.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 21st February 2020, the Planning Authority issued a notification of their intention to REFUSE permission for the following reasons:
 - 1 Having regard to the location of the site in an area designated as a "Settled Landscape" in the Clare County Development Plan 2017-2023 as varied, wherein it is an objective of the Plan under CDP13.2 to require "*that sites have been selected to avoid visually prominent locations*" and "*that site layouts avail of existing topography and vegetation to minimise visibility from scenic route, walking trails, water bodies, public amenities and roads*", it is considered that the structure for which retention is proposed, by reason of its design and visually prominent siting within the wider landscape, would seriously injure the visual amenities of the area, and would constitute a haphazard style of development which is out of character with the pattern of development in the area. Furthermore, it is considered that the structure to be retained, which is not ancillary to the existing dwelling house would set an undesirable precedent for other such

development in the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- 2 Having regard to the documentation submitted with the application, the Planning Authority is not satisfied that the wastewater generated by the proposed development can be treated or dispersed on this site, having regard to the ground conditions at the site. It is considered that the proposal, notwithstanding the use of a septic tank system, represents an unacceptable risk to the environment due to the potential for impacts on the surface water network and on ground water. The proposed development would therefore result in a risk of environmental pollution, and would be prejudicial to public health.

3.2. **Planning Authority Report**

3.2.1. **Environment Section:** No detail of septic tank serving the existing dwelling. FI recommended.

3.2.2. **Planning Report:** No evidence of a previous derelict shed on the site of the studio. New entrance has been constructed. No evidence that applicant lives in the adjoining house and cottage is fenced off from the studio. Newly installed septic tank serves the studio only. Existing sheds around the cottage could be more suitable for ancillary use. Studio to be retained is stand-alone with no demonstrated connection to the existing cottage. Studio results in loss of visual amenity and does not comply with landscape policy. Insufficient detail presented re public health. Site does not appear suitable. Recommendation to refuse permission.

3.3. **Prescribed Bodies**

3.3.1. None on file.

3.4. **Third Party Observations**

3.4.1. None on file.

4.0 **Planning History**

4.1.1. None on the subject site.

5.0 Policy Context

5.1. Development Plan

5.2. Clare County Development Plan 2017-2023

- 5.2.1. Chapter two Core Strategy identifies this area as a rural area under strong urban influence and an area of special control.
- 5.2.2. Section **A1.11 of Appendix 1** of the development plan recognises that the rural countryside is a natural resource with agricultural activity being particularly important. In considering proposals for agricultural development (walls, fences, yards, stables, sheds, slurry pits etc.) the Planning Authority will have regard to the Department of Agriculture document Guidelines and Recommendations on the Control of Pollution from Farmyard Wastes together with the following:
- Siting and design that is keeping with the surrounding area
 - The use of muted coloured materials
 - Grouping of buildings will be encouraged
 - Adequate effluent storage facilities
- The Planning Authority will require adequate provision for the collection, storage and disposal of effluent produced from agricultural developments. The European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2014 set out the requirements for storage of farm effluents and the minimum holding periods for storage of farm wastes.

5.3. Natural Heritage Designations

- 5.3.1. The Mid-Clare Coast SPA site code 004182 and the Carrowmore Point to Spanish Point and Islands SAC site code 001021, are the nearest Natura sites located c11.2km away.

5.4. EIA Screening

- 5.4.1. Having regard to nature of the development comprising the retention of a small scale development in a rural area, it is considered that 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

6.1.1. An agent for the first party responded to the decision of the Planning Authority to refuse permission. The appeal states that the landscape of the subject site has been altered not by the subject development but by the wider proliferation of windfarms. Points raised in the appeal are summarised as follows:

- The subject studio lies between two houses of siblings on a family land holding.
- The studio is 29m from the house to create an environment conducive to art.
- The not-for-commercial use studio replaced a run-down shed that can be seen on the OS survey map.
- The studio is constructed in the pattern of development of the area – single houses with small clusters of farm buildings and sheds.
- The subject site is in a settled landscape but in, on, close to or within sight of a ‘scenic route’ as per appendix 4 of the development plan. The subject site is within two windfarms of 90m turbines that break the skyline.
- The subject non-commercial artist’s studio is not a land use covered in the zoning matrix.
- No third-party objected to the proposal.

6.1.2. The grounds of the appeal can be summarised as follows:

Reason no. 1

- The R474 scenic route is 2.5km from the site. There are no designated walking trails or public amenities.
- The subject building is part of a cluster. It is not in a prominent location and is largely hidden by the wooded area to the east. It is visible for a short section of the local country roads south of Doolough Lake.
- The subject studio is ancillary to the family home. It creates vibrancy in an isolated area. It is questioned that if the shed was for agricultural purposes, it would have received permission.

- Any visual damage to the landscape has already been caused by the windfarms. The subject studio has no significant visual impact.

Reason no. 2

- A site assessment report has been undertaken. Subject to compliance with the recommendation, there will be no risk of pollution or to public health.
- The proposed studio can act as a catalyst for the social integration in the area. the Board is requested to grant permission for its retention along with an improved waste-water treatment system.

Appendix 1 Site Assessment Report

- Site is over locally important aquifer (LI) with a vulnerability of Extreme (X). Underlying bedrock is Central Clare Group of Namurian Series (CNCCG).
- Groundwater protection response R2². 0.9m unsaturated soil required below invert of percolation pipes.
- Results of site assessment will be used to design a new wastewater treatment system for the studio.
- Trail hole depth 1.3m, silt / clay between 0.3m and 0.6m, clay with boulders and cobbles between 0.6m and 1.3m.
- 'T' test 45.94, slightly higher than anticipated. Wastewater from existing building will percolate through the in-situ sub-soil.
- 'P' test 48.94, indicates that topsoil will be able to percolate wastewater from the existing building.
- Recommendation to install a packaged wastewater treatment system and polishing filter.

6.2. Planning Authority Response

- The studio for which permission is sought to retain is a stand-alone development with no demonstrated connection to the existing cottage, which is stated in the appeal to be the residence of the applicants. The cottage is not within the red-line boundary and therefore cannot be considered to be ancillary.

- Proposed development would constitute haphazard development which is out of character with the pattern of development in the area and contrary to objective CDP13.2.
- Planning Authority has serious concerns regarding disposal of wastewater and those concerns remain in the context of the revised document submitted with the appeal.

Appendix 1: Report of Executive Environmental Scientist

- Site characterisation report shows water table at 1.3m, and clay with boulders and cobbles from 0.6m to 1.3. This is not suitable to achieve the required 0.9m of unsaturated sub soil and therefore not suitable for effective attenuation for a P.E. of 4 no. people.
- Photos show rushes on site. This indicates that soil can be waterlogged and a risk that ponding of effluent will occur in the proposed polishing filter.

6.3. Observations

- 6.3.1. None on file.

7.0 Assessment

- 7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised are as follows:

- Principle of Development
- Visual Impact
- Wastewater Treatment

7.2. Principle of Development

- 7.2.1. Permission was sought for the retention of a single storey structure for use as a private artist's studio. The application states that the structure replaced a derelict shed on the same site. I note that the Planning Authority did not accept this and that aerial imagery does not support this.

7.2.2. In their appeal against the decision of the Planning Authority to refuse permission, the applicant states that the studio will revitalise the area, would receive permission if it were an agricultural structure and is in keeping with the pattern of rural development in the area. They state that the subject studio is ancillary to a family home and should be assessed as such. As noted above however, the red line boundary for the proposed development does not include either of the adjoining homes, there is no physical link from the studio to either of the adjoining dwellings and the studio has its own vehicular entrance. It cannot be accepted as being ancillary to a family home. The use of the structure may be ancillary but the structure itself is a stand-alone development.

7.2.3. Should the vehicular entrance be closed and a path created between the existing dwelling and the studio, the retention of the development may be acceptable.

7.3. **Visual Impact**

7.3.1. The subject studio, at a point higher than the dwelling and closer to the road leading to a greater visual impact. The structure, with windows and doors reads as a small dwelling, rather than an ancillary outbuilding. The proximity of the subject site to Doo Lough (approx. 400m to the south) warrants the protection of the visual amenity of the area. The subject building, with an overall height of 5.2m is not screened and is clearly visible as one travels east along the road.

7.3.2. The subjects site is located in a 'settled landscape'. One of the policy objectives for such landscapes is to minimise visual impact, avoiding intrusions on scenic routes and ridges and shorelines or other visually prominent locations. (policy CDP13.2 refers). The subject structure to be retained unfavourably contrasts with the low profile, heavily screened bungalows to the south and south-east. This could be addressed by suitable screening however.

7.4. **Wastewater Treatment**

7.4.1. The Planning Authority's second reason for refusal refers to the safe disposal of wastewater on the subject site. The appeal submission includes a site characterisation form which refers to trail hole investigations undertaken in March 2020. The trail holes were dug to 1.3m, not the required 2.1m. Clay with boulders

and cobbles was encountered at 0.7m. the groundwater response of R21 therefore a minimum of 0.9m unsaturated soil is required.

7.4.2. In responding to the first party appeal the submission of the Planning Authority includes a report from their Environmental Scientist. This report states that the documents submitted with the appeal were reviewed and that the site is not suitable for effective attenuation for a pe of 4 no. people. This is due to the inability provide 0.9m of unsaturated soil and the proliferation of rushes on site indicating waterlogging and the risk of ponding in the proposed polishing filter.

7.4.3. It is considered that it has not been demonstrated that the subject site can safely dispose of the wastewater generated by the existing property. The proposed development therefore may be prejudicial to public health.

7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the proposed development in a rural area, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 **Recommendation**

8.1. It is recommended permission be REFUSED for the following reasons and considerations:

- 1 Having regard to the stand-alone nature of the subject structure to be retained, its lack of connection to the existing dwelling and the new vehicular entrance serving the structure, it is considered that the subject structure cannot be considered to be ancillary to the existing dwelling. the retention of such a structure would create an undesirable precedent for haphazard development and as such would be contrary to the proper planning and sustainable development of the area.
- 2 Having regard to the documentation submitted with the application and the appeal, it has not been satisfactorily demonstrated that the wastewater generated by the proposed development can be treated or dispersed on this site, having regard to the ground conditions at the site. It is considered that the proposal, notwithstanding the use of a septic tank system, represents an

unacceptable risk to the environment due to the potential for impacts on the surface water network and on ground water. The proposed development would therefore result in a risk of environmental pollution, and would be prejudicial to public health.

Gillian Kane
Senior Planning Inspector

10 August 2020