



An
Bord
Pleanála

Inspector's Report

ABP-307497-20

Development	Permission for alterations to the site size/boundaries and alternative waste water treatment system to development previously granted under Reg. Ref. No.s 10151 and 15612.
Location	North Commons, Carlingford, Co Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	19776
Applicant(s)	Roisin Carroll
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	John Aylmer & Deidre Hughes
Date of Site Inspection	24 th August 2020

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.1188 hectares, is located approximately 2km to the north of Carlingford. The appeal site is located off the L-70633-0, which is a tertiary class county road that ends in a cul-de-sac to the north west of the appeal site. The appeal site is irregular in shape and is made up of two different portions. The largest portion has a derelict single-storey structure. The smaller part of the site is located further to the south east and there is an existing dwelling and its associated driveway and vehicular access between the two parts of the site. The site includes a narrow strip along the road frontage of the adjoining dwelling that links the two parts of the site. There is also a single-storey dwelling located to the north west of the site.

2.0 Proposed Development

- 2.1. Permission is sought for alterations to the size/boundaries and alternative wastewater treatment system to development previously granted under ref no. 10151 and 15612.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to four conditions. Of note is the following condition.

Condition no. 2: Incumbent on applicant to apply for a road opening license and be responsible for the full repair of the road.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (01/11/19): Further information required including maps showing existing wastewater treatment systems, watercourses, water supplies and a groundwater risk assessment.

Planning report (09/06/20): the proposal was considered acceptable in the context of public health and in accordance with the proper planning and sustainable development of the area. A grant of permission was recommended based on the conditions outlined above.

3.2.2. Other Technical Reports

Environment Section (22/10/19): Further information required including maps showing existing wastewater treatment systems, watercourses, water supplies and a groundwater risk assessment.

Environment Section (28/05/20): Permission granted subject to the following conditions.

3.3. Prescribed Bodies

3.3.1 None.

3.4. Third Party Observations

3.4.1 Submission by John Aylmer & Deidre Hughes, Drumharriff, North Commons, Carlingford, Co. Louth, A91XV20. The issues raised are as follows...

- Land ownership, consent, validity of application.

4.0 Planning History

15612: Extension of the duration of permission ref no. 10151.

10151: Permission granted for renovation of existing cottage including an extension.

91334: Permission granted for extension to dwelling.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Louth County Development Plan. The appeal site is within development Zone 2 which has a stated objective ‘to protect the scenic quality of the landscape and facilitate development required to sustain existing rural community’.

Policy SS51: To require that new dwellings and or extension to existing dwellings with 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.

Policy SS65: To protect groundwater and surface water from contamination from domestic effluent by ensuring that all sites requiring individual waste water treatment systems are assessed by suitably qualified persons in accordance with the recommendation contained in the “Code of Practice: Wastewater Treatment Systems for Single Houses” published by the Environmental Protection Agency (EPA 2009”).

5.2. Natural Heritage Designations

5.2.1 None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by John Aylmer & Deidre Hughes, Drumharriff, North Commons, Carlingford, Co. Louth, A91XV20. The grounds of appeal are as follows...

- The applicants have not asserted sufficient legal interest to lay the wastepipe serving the wastewater treatment system and the applicant have not obtained

the appellants consent as would be required under Article 22(2)g of the Planning and Development Regulations, 2001.

- A road opening licence does not confer such rights. The appellants have submitted a folio and note the application is invalid in absence of consent form the appellants.
- It is noted that the applicant was requested to demonstrate consent as part of the further information request. The appellants refer to a court case regarding the application of Article 22(2)g.
- In response to further information the route of the pipe is clearly shown within the appellants' folio and not that of Peadar Elmore.
- The appellants notes that the applicant's assertion that the pipe is running through lands in their ownership is incorrect.
- It is also noted that the status of the road as a public road or taken in charge does not negate issue of title.

6.2. Applicant Response

6.2.1 No response.

6.3. Planning Authority Response

6.3.1 Response by Louth County Council.

- The Council granted permission on the basis that the proposal include the laying of a pipe in a public road in charge of Roads Authority. It was not considered whether a letter of consent was required from Louth County Council to carry out the proposed works as such would be covered by a Road Opening License.
- Notwithstanding such it is noted the appeal submission relates to a dispute in ownership and that the planning system is not designed to resolve such disputes. The response notes the provisions of Section 34(13) of the Planning and Development Act, 2000 (as amended).

- It is noted that if works are required on third party lands outside the control of the applicant that appropriate consent is necessary. It is noted that the Planning Authority have no objection to the proposal in principle.

7.0 Assessment

7.1. Having inspected the site and the associated documents the main issues can be assessed under the following headings.

Land ownership/consent

Appropriate Assessment

7.2 Land ownership/consent:

7.2.1 Permission is sought for alterations to the size/boundaries and alternative wastewater treatment system to development previously granted under ref no. 10151 and 15612. Permission was granted under ref no. 10151 for renovation of existing cottage including an extension and provision of a wastewater treatment system. This permission was extended in duration under ref no. 15612 (until 15/12/20). The proposal is for an alterations in the boundaries and an alternative wastewater treatment system to that permitted under ref no. 10151. It is notable that the configuration of the site under the permitted development is not significantly different with the portion of the site containing the wastewater treatment detached from that containing the dwelling.

7.2.2 The proposal entails routing the waste pipe connecting the wastewater treatment system to the dwelling within the road due the unusual configuration of the site. The appellants are the owners of the dwelling located between the two portions of the site with a vehicular access to their dwelling and the dwelling to the north west of the site located between the two portions of the site. The appellants note that their landownership goes to the centreline of the road and that there is a requirement for

consent to be obtained to lay the pipe and that such is required under Article 22(2)g of the Planning and Development Regulations, 2001.

7.2.3 The applicants appear to have a differing view in relation to whether consent is required or not from the appellants and the Planning Authority are of the view that the proposal entails laying a pipe under a public road and subject to adequate provision for a Road Opening License is acceptable.

7.2.4 The proposal is for amendments to a previously permitted development with a change in site size/boundaries and an alternative wastewater treatment system. The configuration of the site is not significantly different than the approved development in that the site is made up of two separate portions (the approved development site has a stronger link with the site including an area in between at the entrance to the existing dwellings). There appears to be a dispute regarding ownership and entitlements for consent to carry out works within the road area. The Board is not the appropriate authority to determine or mediate issues concerning land ownership or the status of a public road and the entitlements to carry out works within such. The Boards function is to consider development in the context of the proper planning and sustainable development of the area. In this case the proposal is for a change in site size/boundaries and the provision of an alternative wastewater treatment system to that permitted under ref no. 10151 and extended under 15612. I would consider that the proposal as sought would not be contrary to the proper planning and sustainable development of the area is not significantly different to the development granted previously. In relation to the issue of landownership and consent I would note the provision of Section 34(13) of the Planning and Development Act, 2000 (as amended) which states that “a person shall not be entitled solely by reason of a permission under this section to carry out any development”.

7.3 Appropriate Assessment:

7.3.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, 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 a European site.

8.0 Recommendation

8.1. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposal which is amendments to a permitted development under ref no. 10151 and the fact that the alterations would have no significant impact in regards to visual amenity, adjoining amenity, traffic safety or public health, the proposed development would, therefore, be acceptable in context of the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out in accordance with conditions attached to ref no. 10151 and as extended under ref no.15612.

Reason: In the interest of clarity.

2. The development shall be carried out and completed 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 carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

3.

(a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 23rd day of September 2019, and in accordance with the

requirements of the document “Wastewater Treatment Manual: Treatment Systems for Single Houses”, Environmental Protection Agency (current edition).

Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

Colin McBride
Planning Inspector

09th September 2020