



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308029-20

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<b>Development</b>	Demolish existing clubroom building & remove temporary changing room and construct new two storey changing facilities & clubrooms.
<b>Location</b>	Deerpark, Virginia, Co. Cavan
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	19523
<b>Applicant(s)</b>	Virginia RFC.
<b>Type of Application</b>	Planning permission.
<b>Planning Authority Decision</b>	Grant permission with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Inland Fisheries Ireland.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	1 <sup>st</sup> December 2020.
<b>Inspector</b>	Elaine Sullivan

## 1.0 Site Location and Description

- 1.1. The subject site is located on the outskirts of Virginia town and within the townland of Deerpark. It has a stated area of 2.4ha and is accessed via an existing public laneway from Regional Road, R194, (Virginia to Ballyjamesduff). The site is located at the end of the laneway and directly adjacent to the entrance to Deerpark Forest. There are three residential dwellings in place along the western side of the laneway, two of which are directly opposite the site.
- 1.2. The site itself comprises two rugby pitches, laid out side by side with a single storey clubhouse of 163m<sup>2</sup> in place along the western side of the site. This is set back slightly from the access road and a long container is in place to the south of the building and alongside the rugby pitch.
- 1.3. An area of hardstanding for informal parking is positioned alongside the pitch and adjacent to the forest. This area is not physically separated from the access road, but a row of mature trees appears to mark where the site boundary is in relation to the access road.
- 1.4. Deerpark Forest forms the southern boundary of the site and access to the forest is directly adjacent to the south-western corner of the site. There is a noticeable change in levels between the parking area and the pitches, with the pitches at a higher level. The dwellings are at a lower level again from the parking area.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the following works;
  - To erect a two-storey building of 464m<sup>2</sup> to include dressing rooms at ground floor level and, gym, kitchen, stores and meeting room at first floor level. The structure would have a plaster finish with metal cladding and a curved metal roof and would be positioned to the rear of the site and directly adjacent to Deerpark Forest Park, which is also a proposed National Heritage Area. The existing clubhouse (163m<sup>2</sup>) and containers on site would be removed
  - Car parking, in the order of 63 spaces, would be provided along the western boundary of the site and adjacent to the access road. The parking would be laid out in two rows of perpendicular parking spaces. The area is currently

open to the lane and the drawings do not specify if any physical boundary treatment will be installed. Two additional disabled car parking spaces are shown to the south-eastern corner of the site and in close proximity to the clubhouse.

- Works are also proposed to decommission the existing septic tank onsite and to connect to the existing surface water drain and to the existing foul drainage system.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Planning permission was granted by the Planning Authority subject to 8 conditions, which were mostly standard in nature. Condition No. 4 states the following;

- Where the applicant proposes to connect to a public waste/wastewater network operated by Irish Water, the applicant shall sign a connection agreement with Irish Water prior to the commencement of the development and adhere to the standards and conditions set out in that agreement.*
- Irish Water infrastructure capacity requirements and proposed connections to the Water and Waste Water Infrastructure will be subject to the constraints of the Irish Water Capital Investment Programme.*
- All development shall be carried out in compliance with Irish Water Standards codes and practices.*

*Reason: In the interest of public health and environmental sustainability.*

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

There are two reports by the Planning Officer on file.

Report dated the 18<sup>th</sup> February states the following:

The principle of the proposed development is acceptable, as is the design and scale of the proposal.

There are no concerns regarding the impact on existing residential amenity and it is not considered that the proposal would have an adverse impact on the integrity of the pNHA to the south of the site in terms of visual impact.

Car parking will be provided in accordance with the standards of the Development Plan and additional car parking will be provided in place of the clubrooms and temporary storage, which will be removed. A more formal and orderly arrangement for car parking will be provided by the development, which is acceptable.

The development would connect to the existing surface water and foul water drainage network. The response from Irish Water requested that further information be requested with regard to the feasibility of connection to the public water/waste infrastructure and with regard to the provision of a mains/sewer connection for the development.

Planning Report dated 29<sup>th</sup> July 2020;

This report refers to the further information submitted and notes that the response comprised a Confirmation of Feasibility letter from Irish Water and a revised site layout plan. This information was re-advertised in public notices. The Planning Officer stated that no further concerns arise and recommended a grant of planning permission.

3.2.2. Other Technical Reports

Area Engineer – Reinstatement of public laneway to be in accordance with purple book.

3.3. **Prescribed Bodies**

**Irish Water** – In order to assess the feasibility of a connection to public water/waste.water infrastructure further information is requested. The applicant is required to engage with Irish Water through the submission of a Pre-Connection Enquiry, (PCE), in order to determine the feasibility of a connection to the public water/wastewater infrastructure. The Confirmation of Feasibility, (CoF), must be submitted to the planning department as the response to this further information request. Please note that where Irish Water does not have water/waste infrastructure within the public road fronting the proposed development. A

mains/sewer extension will be required to cater for the proposed development. This infrastructure is not on the current Irish Water Capital Investment Plan.

**Inland Fisheries Ireland** – The submission is summarised as follows;

- The EU Water Framework Directive (2000/60/EC) requires the protection of the ecological status of river catchments. One of the primary objectives of the Directive is to establish a framework which prevents further deterioration and protects and enhances the status of aquatic ecosystems.
- Under Article 5 of the 2009 Surface Water Regulations - a public authority, in the performance of its functions, shall not undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water. Also, Article 28(2) of said Regulations states that a surface water body whose status is determined to be less than good shall be restored to at least 'good' status not later than the end of 2015.
- The application is adjacent to Lough Ramor and wastewater from this development will be discharging to Virginia Wastewater Treatment Plant, (WWTP). Lough Ramor is currently at 'bad' status and should have been restored to at least 'good' by 2015. The lake is a prominent coarse fishing lake with prominent stocks of bream, roach, eels and pike. It also contains stocks of brown trout.
- As per the 2017 Annual Environment Report (AER) submitted to the EPA that the design capacity of the Virginia WWTP is 3,800 population equivalent (PE). The 2018 AER, (published in August 2019), reported a capacity for 343 PE, However, this figure does not take into account extant permissions, (PA Ref. 17/475, 18/118 and ABP300872/18), which could yield an additional 448 PE and could potentially leave Virginia WWTP overloaded.
- In 2018 Virginia WWTP was non-compliant for Emission Limit Values, (ELV), due to stormwater overflows. An EPA audit carried out on the 18<sup>th</sup> December 2019 outlined deficiencies in the WWTP. A capital upgrade of the WWTP was originally due in 2021, however this completion date is now projected to be 2024.

- Court of Justice of the European Union judgement (Case C – 461/13 of 2015) held that member states are required, unless a derogation is granted, to refuse an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Water Framework Directive.
- Refer to An Bord Pleanála decisions, PL2.2488 2017, 303509/19 and 306108/19, all of which reference the existing deficiencies in the provision of wastewater treatment facilities and the period within which the constraint may reasonably be expected to cease in the reasons for refusal.
- There has been no screening for Appropriate Assessment.

#### 3.4. Third Party Observations

One submission was received from local residents and is summarised as follows;

- There is a demand for parking for training and matches and the parking arrangement can restrict access to residential properties and is a health and safety concern. The increase in parking for the development could exacerbate this.
- The current arrangement for the treatment of sewage is a concern. There are no proper sewage works and this can result in overflow. It is unclear how the proposed connection to the public sewer will work and there are concerns regarding the logistics of construction works. Surface water runoff from the pitches also occurs.
- The access road is in poor condition. Clarification is sought as to where and how the pipes will be laid in the road and how access to residential properties will be maintained.
- There are concerns regarding residential amenity in terms of overlooking, overshadowing, privacy and noise from generators.

## 4.0 Planning History

- 4.1. **17/204** – Planning permission granted by the Planning Authority on the 11th August 2017 for the construction of a single storey extension (153m<sup>2</sup>) to the existing clubhouse (163m<sup>2</sup>) including formation of new connection to existing public sewage system. The retention of existing pre-cast concrete retaining wall and cut/fill ground works associated with the laying out and use of land for sports where no charge is made for admission of the public. The following conditions were attached;

*C4. Irish Water Infrastructure capacity requirements and proposed connections to the Water and Waste Water Infrastructure will be subject to the constraints of the Irish Water Capital Investment Programme.*

*Reason: In the interest of public health and environmental sustainability.*

*C5. The applicant shall enter a Connection Agreement with Irish Water prior to any connection taking place on site.*

*Reason: In the interest of public health and environmental sustainability*

- 4.2. **12/114** - Planning permission granted by the Planning Authority on the 30th July 2012 for works to demolish existing clubroom building & remove temporary changing room and to construct new two storey changing facilities & clubrooms of 274m<sup>2</sup> with connection to existing public sewer with to upgrade existing floodlighting & all ancillary site development works. Condition No. 6 states the following;

*Connection to the watermain and sewers shall be the subject of a separate application and shall be subject to the fees and charges applicable at that time.*

*However, no connection will be considered until the applicant has made satisfactory arrangements with the local Area Engineer for the inspection of pipelines during laying and before backfilling of trenches and for the pressure testing of pipelines.*

*Written evidence of the Area Engineer's approval will be required.*

*Reason: In the interests of public health, traffic safety and amenity.*

**04/2445** - Planning permission granted by the Planning Authority on the 5th April 2005 to amend works granted under planning permission ref no 03/494 - to layout of building and all other associated site works.

**03/494** – Planning permission granted by the Planning Authority on the 11<sup>th</sup> August 2003 for works to erect dressing rooms, shower, toilets, gym, meeting room and multi-purpose room extension to existing clubhouse, and all other associated site works.

**81/12469** – Planning permission granted by the Planning Authority to erect changing rooms, social rooms and construct a septic tank.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Cavan County Development Plan 2014-2020**

Virginia is defined as a Tier Two town in the settlement hierarchy for the County. The subject site is located within the development boundary of Virginia and is zoned Amenity/Recreation within the County Development Plan.

The site is also directly adjoining the Lough Ramor pNHA.

#### **Recreation Policies;**

**SCP14** To meet the recreational needs of all communities and individuals in the county.

#### **Chapter 4 – Physical Infrastructure**

##### **Table 4.7 – Car Parking Standards;**

Sports Clubs, grounds – 1 space per 15m sq and 6 spaces for each pitch. (Bicycle spaces – 1 stand per sports clubs/grounds).

#### **4.5 – Water and Wastewater Services**

**PI084** – To Achieve compliance with the requirements of the ‘Water Framework Directive’.

**PI075** - To ensure sustainable collection, treatment and discharge of wastewater effluent generated within the County.

**PI087** To require that adequate and appropriate waste and drinking water service infrastructure is in place, prior to further development.



**Virginia Town Plan** - The Plan states that 'Virginia along with Mullagh is served by the Bailieboroughs Regional Water Supply Scheme which is currently working at capacity. The Waste Water Treatment Plant is currently working over capacity. These are issues which must be addressed before further development can occur in the town'.

## 5.2. **Natural Heritage Designations**

No designations apply to the subject site.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The grounds of appeal, as raised in the submission from the third party appellant, Inland Fisheries Ireland, can be summarised as follows;

- The EU Water Framework Directive (2000/60/EC) requires the protection of the ecological status of river catchments. One of the primary objectives of the Directive is to establish a framework which prevents further deterioration and protects and enhances the status of aquatic ecosystems.
- Under Article 5 of the 2009 Surface Water Regulations - a public authority, in the performance of its functions, shall not undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water. Also, Article 28(2) of said Regulations states that a surface water body whose status is determined to be less than good shall be restored to at least 'good' status not later than the end of 2015.
- The application is adjacent to Lough Ramor and wastewater from this development will be discharging to Virginia Wastewater Treatment Plant, (WWTP). Lough Ramor is currently at 'bad' status and should have been restored to at least 'good' by 2015. The lake is a prominent coarse fishing lake with prominent stocks of bream, roach, eels and pike. It also contains stocks of brown trout.

- As per the 2017 Annual Environment Report (AER) submitted to the EPA that the design capacity of the Virginia WWTP is 3,800 population equivalent (PE). The 2018 AER, (published in August 2019), reported a capacity for 343 PE, However, this figure does not take into account extant permissions, (PA Ref. 17/475, 18/118 and ABP300872/18), which could yield an additional 448 PE and could potentially leave Virginia WWTP overloaded.
- In 2018 Virginia WWTP was non-compliant for Emission Limit Values, (ELV), due to stormwater overflows. An EPA audit carried out on the 18<sup>th</sup> December 2019 outlined deficiencies in the WWTP. A capital upgrade of the WWTP was originally due in 2021, however this completion date is now projected to be 2024.
- Court of Justice of the European Union judgement (Case C – 461/13 of 2015) held that member states are required, unless a derogation is granted, to refuse an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Water Framework Directive.
- Refer to An Bord Pleanála decisions, PL2.2488 2017, 303509/19 and 306108/19, all of which reference the existing deficiencies in the provision of wastewater treatment facilities and the period within which the constraint may reasonably be expected to cease in the reasons for refusal.

## 6.2. Applicant Response

A response was received from the applicant on the 9<sup>th</sup> September 2020 and contains the following comments;

- Planning permission was previously granted in 2017 (Ref. 17/204) for the construction of a single storey extension to the existing clubhouse including the formation of a new connection to the existing public sewage system including other works. Condition No. 3 of this permission states, 'Where the applicant proposed to connect to public water / wastewater network operated by Irish Water, the applicant must sign a connection agreement with Irish Water prior to the commencement of development and adhere to standards and conditions set out in that agreement'. A connection agreement was

obtained from Irish Water to form a connection to the public sewage treatment network.

- Permission granted under Ref. 17/204 was for a greater number of changing rooms than the subject development and this permission is still valid. It is argued that the current application will have a lesser impact on the sewage infrastructure.
- Notwithstanding the above, Virginia RFC are amenable to the imposition of a condition restricting any connection to the public sewage network until the system has full capacity to accept additional loadings.
- In the short term, any delay in obtaining planning permission will jeopardise funding currently available to the development, which may result in Virginia RFC implementing the extant permission which has a greater loading capacity.

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

A response from the Planning Authority was received on the 16<sup>th</sup> September 2020 and contains the following comments;

- The applicant submitted a 'Connection Offer' letter received from Irish Water, which was received following a pre-connection enquiry made to Irish Water. This letter confirms that Virginia RFC could connect to the existing mains sewerage supply.
- The nearest Natura 2000 site is the River Boyne and Blackwater SAC & SPA, which is located 6km from the site. Having regard to the nature of the development and the distance of same from the Natura 2000 sites, we consider that an appropriate assessment is not required for this development.
- The Planning Authority consider that all other issues raised in the appeal have been previously addressed in the assessment of the development. The application was referred to Irish Water who recommended approval of the development subject to conditions. It is Irish Water's responsibility to advise whether there is sufficient capacity to accommodate such developments.

## 6.4. Observations

None received.

## 7.0 Assessment

7.1. Having examined the application details and all other documentation on file, inspected the site and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Impact on Residential Amenity
- Impact on Receiving Environment
- Drainage Capacity
- Drainage Infrastructure

### 7.2. Impact on Residential Amenity

There are two residential dwellings in close proximity to the site boundary and directly facing onto the site. These dwellings will not experience any additional impacts from the development in terms of overshadowing or overlooking. A covered viewing platform is shown along the northern elevation of the building and this area would be open at the sides. The western elevation of the building would be 47m from the site boundary and approximately 77m from the front elevation of the nearest dwelling. In my opinion, this distance along with the mature trees along the site boundary would be sufficient to prevent overlooking.

I am also of the view that the proposed development would help to provide some order and formality to the existing parking area, which is directly opposite the two dwellings. At the moment the parking spaces are not clearly demarcated. The new arrangement would allow for a formal arrangement for both access and parking, which would help to alleviate problems with access for residents during busy times.

Concerns were also raised with regard to the existing surface and foul-water drainage from the site. This issue is discussed further in the report. However, I note that from the third party submissions, the current arrangement would appear to be

insufficient to deal with the requirements of the club. A comprehensive approach to upgrading the overall drainage for the site would be of benefit to the existing residents.

### 7.3. Impact on Receiving Environment

The proposed building is of simple form and construction. The first floor element and roof would be clad in grey corrugated metal with some timber cladding on the western elevation with a napp plaster finish on the lower level. It would be positioned in the southern corner of the site and directly adjacent to Deerpark forest, which is also part of the pNHA of Lough Ramor. In my opinion the building itself would not result in any undue visual impact on the pNHA. It would be separated from the forest area by a line of mature trees, which will be retained, and would be approximately 50m from the entrance to the forest. On the occasion of the site visit there has been some clearance works carried out within the forest and directly to south of the subject site. Notwithstanding these works, the mature tree line would still provide some visual screening to the proposed building.

The River Blackwater runs through the forest and provides a direct hydrological pathway to Lough Ramor. Potential impacts from the development on any Natura 2000 sites is examined further in the report. However, given the distance from the river and the surrounding context, I am satisfied that the construction of the development would not result in any significant negative impacts on the character and setting of the pNHA. Should the Board be minded to grant permission for the development, I would suggest that a condition is attached that requires a Construction Management Plan to be submitted to the Planning Authority for written agreement prior to the commencement of development.

### 7.4. Drainage Capacity

The Cavan County Development Plan 2014-2020 states that the Regional Water Supply Scheme that serves Virginia is currently working at capacity and, the Waste Water Treatment Plant, (WWTP) is currently working over capacity. Subsequent reports from the EPA confirm the status of the WWTP and, the EPA report on Urban

Waste Water Treatment in 2019 identified Virginia as an urban area where improvements are needed to resolve environmental priorities identified by the EPA. Virginia is also listed as a town that did not meet the European Union's legally binding standards for wastewater treatment in 2019 as it did not meet the secondary treatment requirements.

In recent years, planning permission has been consistently refused for residential development in the Virginia in consideration of the constraints and deficiencies of the wastewater facilities and the potential for hazards to public health, (Ref. PL2.248992, 303509/19 and 306108/19).

The subject application does not contain any information regarding any additional loading that would occur from the development. However, given the nature of the development, which is not residential, the clubhouse would be mostly catering for a local PE which would already be included in the existing capacity of the local WWTP. Therefore, the additional loading would come from events where people travelled from outside the area. Whilst no figures are given for the frequency or additional PE from these events, by their nature they would be intermittent and would be unlikely to result in significant additional loading of the existing system. As such the development would not result in a deterioration in the chemical or ecological status of a body of surface water and would therefore, not contravene Article 5 of the 2009 Surface Water Regulations.

#### 7.5. Drainage Infrastructure

There is currently no foul water infrastructure connecting the subject site with the existing mains drainage. A connection of approximately 160m in length, (as measured from the drawings), would be required from the site to the existing connection point on the northern side of the R194. (I note that Section 3.1 of Appendix 3, of the Connection Agreement with Irish Water states that the distance from the Service Connection Point to the existing mains is 350m).

The proposed foul water pipe is shown within the public road, which is outside of the red line area. No reference is made to this by the applicant or the Planning Authority. In my opinion the description of the development in the public notices does not fully describe the drainage works required. Planning permission is sought

to *'Construct new two storey changing facilities & clubrooms with connection to existing public sewer & all ancillary site development works'*. In my view the wording does not adequately describe the scope of works required to connect with the public sewer, which requires a connection of at least 160m in length.

Third party submissions raised the issue regarding the lack of existing infrastructure within the public road and queried where and how the pipes would be laid. This issue was not addressed in the Planning Officer's report and no further details were supplied by the applicant. I note that the original submission from Irish Water states that *'where Irish Water does not have water/waste water infrastructure within the public road fronting the development a mains/sewer extension will be required to cater for the proposed development. At this time a mains/sewer extension is not on the current Irish Water Capital Investment Plan'*.

In response to a request for further information, the applicant submitted a Connection Offer and Connection Agreement from Irish Water. However, the agreement is based on a high-level desk top analysis carried out by Irish Water on the feasibility of carrying out the connection works and allows for a number of conditions within which the agreement can be terminated. The agreement does not provide an undertaking by Irish Water to carry out the connection works required.

The application as submitted requires works to be carried out within the public road, which is outside of the red line boundary and not within the control of the applicant. It is also unclear as to who would carry out these works and when. In the absence of these details the development proposal is premature.

As these issues were not specifically addressed in the Planning Officer's report the Board may determine that it is a new issue and seek the views of the parties.

#### 7.6. Appropriate Assessment

The appeal site is neither within nor immediately abutting any European site. The closest European site is the River Boyne and River Blackwater SPA & SAC, which is approximately 6km away. Kilconny Bog (Cloghbally) SAC is approximately 9.7km away.

The River Blackwater flows through Deerpark Forest and provides a hydrological pathway to Lough Ramor, which joins the River Boyne and River Blackwater SPA & SAC. However, having regard to the minor nature of the development and the separation distance from the site to the River and to any European site, no Appropriate Assessment issues arise. 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. I recommend that planning permission be refused.

## **9.0 Reasons and Considerations**

The subject site is not served by a connection to the existing mains wastewater infrastructure. The works required to deliver this infrastructure are outside of the red line area of the application and it unclear as to how or when the connection would be delivered. The proposed development is contingent on the connection to the mains and as such would be premature pending the availability of a public sewer, and would be contrary to the proper planning and sustainable development of the area.

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Elaine Sullivan  
Planning Inspector

9<sup>th</sup> December 2020