



An
Bord
Pleanála

Inspector's Report ABP-312082-21

Development	Retention to continue to use the building (when refurbished) for residential rehabilitation use
Location	St. James Camino Centre, Cloncurry, Enfield, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	21/1289
Applicant(s)	St. James Resources Centres LTD.
Type of Application	Retention and Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First
Appellant(s)	St. James Resources Centres LTD.
Observer(s)	Declan and Janet Keoghegan.
Date of Site Inspection	7 th July 2022.
Inspector	Lucy Roche

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1.0 Site Location and Description

- 1.1. The appeal site is located at Cloncurry Cross in the townland of Cloncurry, Co. Kildare, c2km to the east of Enfield, and c120m east of the county boundary with Co. Meath. The site is bounded to the north by the R148 Regional Road and to the east by the County Road (L1007). Existing development in the area comprises mainly one-off rural housing and agricultural structures. There is a bus stop on the R148, c60m north of the site entrance.
- 1.2. The appeal site, with a stated area of 1.053ha, comprises a building complex of two adjoining single storey structures with a stated gross floor area of 516.3sqm. The complex operates as an addiction rehabilitation facility under the name 'Camino'. It would appear from the details submitted that the complex was damaged by fire (c2018) and partially demolished. Both existing structures are access separately from the northern elevation. A partially constructed single storey extension (c60sqm) to the southwest will, if completed, provide for an internal connection between the two existing structures.
- 1.3. A separate detached dwelling to the west of the appeal site would also appear to form part of the 'Camino' however this dwelling and its curtilage is located outside of the development boundary and has not been outlined in blue on the submitted plans.
- 1.4. The site is served by an extensive curtilage, primarily set out in lawn. An area of hard standing to the front of the complex facilitates on-site parking. During site inspection I observed two pigeon lofts to the north of the parking area. These structures have not been detailed on the site layout plans submitted with the application and would appear to be only partially located within the redline site boundary. The site is bounded by mature trees / hedgerow which provide extensive screening.
- 1.5. Access to the site is provided via an entrance off the L1007 County Road to the east. this entrance is located approximately 40 metres south of the junction with the R148. The entrance is shared with an existing detached bungalow to the west of the appeal site.

2.0 Proposed Development

- 2.1. St. James Resources Centres LTD are seeking retention permission to continue to use the building (when refurbished) for residential rehabilitation use. In accordance with the details submitted the building was used as a rehabilitation facility since 2001 until it was damaged by a fire in 2018.
- 2.2. Planning Permission has also been sought to repair and rebuild the fire damaged building and provide a rear single storey extension of 60m².
- 2.3. The building (as proposed) comprises 8 double bedrooms, shower room, toilets, staff room, plant room, gym, kitchen/utility, reception/office, stores, day rooms and resident rooms. The works include new fire safety systems, emergency lighting and fire escape doors.
- 2.4. The total floor area of the extended single storey building will be 582.9m². The building footprint will be smaller than the original fire damaged building.
- 2.5. A site characterisation report along with proposals to up-grade the existing wastewater treatment and disposal system on site have been submitted in support of the appeal.

3.0 Planning Authority Decision

3.1. Decision

Kildare County Council did by order dated 3rd November 2021 decide to refuse permission for the proposed development for two reasons as follows:

- 1) Objectives HS01 and HS02 of the Kildare County Development Plan 2017 – 2023 provide for the establishment and expansion of healthcare facilities, including for people undergoing addiction treatment, within appropriate locations within the county. It is considered that the location of the proposed development in an undesignated and unserved rural area is not appropriate location, would constitute a haphazard and unsustainable for of development and would be seriously injurious to the rural character of the area. the proposed development would, therefore, be contrary to Development Plan Policy and the proper planning and sustainable development of the area.

- 2) Insufficient information has been submitted to demonstrate to the satisfaction of the Planning Authority that the site is suitable for the provision of an on-site wastewater system to cater for the proposed development. Consequently, if permitted the proposed development would be prejudicial to public health and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The case planner in their report has regard to the context of the site, its planning history, third-party submissions, and interdepartmental reports received
- They consider that the applicant has provided little information in the way of justification for the proposed development at this particular location i.e. rural area poorly served by public transport.
- They consider, with reference to Objectives HS01 and HS02 of the Kildare County Development Plan that provision has been made for addition rehabilitation services with Primary Health Centres throughout the County and that designated settlements with available services are more appropriate for rehabilitation use.
- They consider the application site would represent an inappropriate location for the intensification of such services in a remote rural area and would constitute haphazard development
- They raise no issues in relation to the design of the proposed extension or its potential impact on the amenities of adjoining properties in terms of overlooking or loss of light
- They note that further information has been requested by both the environment section and EHO in relation to proposals for wastewater treatment / disposal.
- They recommend that permission be refused for 2no reasons and set out in section 3.1 above.

3.2.2. Other Technical Reports

Note: The documentation submitted to the Board does not include hard copies of the interdepartmental reports received from the EHO or the Environment Section. However, I note that the contents of these reports have been included in the report of the case planner and that they are available on-line.

EHO Requests further information in relation to the location of the existing well on site, the location of wells and WWTS serving neighbouring properties and the capacity of the existing WWTS to serve the proposed development.

Environment: Requests further information in relation to the capacity of the existing WWTS to serve the proposed development, well location and the location of wells, WWTS, streams / ditches etc on lands bordering or adjacent to the site

Transportation Dept.: No observations

Maynooth MD Engineer: No objection subject to conditions.

Water Services: Condition recommended in relation to surface and foul water drainage

CFO: No objection subject to condition

3.3. Prescribed Bodies

Irish Water: No objection subject to condition

Dept. Housing, Local Government and Heritage:

Recommends archaeological monitoring to be carried out on site

3.4. Third Party Observations

The planning authority received three third-party submissions during the course of their determination of the application. The issues raised in these submissions are similar to those raised in the observation received on behalf of Declan and Janet Keoghegan, which are outlined in Section 6.3 of this report.

4.0 Planning History

4.1. Appeal site and Adjoining Residential property to the west

ABP Order 09/RL.2224 (2005):

An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, decided that the said change of use of two dwellings to residences for up to six persons and two carers at Cloncurry Cross, Enfield, County Kildare is exempted development having regard to, in particular: Class 14(f) Part 1, Schedule 2 of the Planning & Development Regulations, 2001

Class 14(f): Development consisting of a change of use—from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.

Conditions / Limitations:

The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.

4.2. Appeal Site

KCC Ref: 89/097: permission granted (c1989) for stores and office extensions to front and rear of existing residence.

KCC89/968: permission granted (c1989) to use part of existing dwelling for bed and breakfast accommodation.

KCC Ref:92/136: permission granted (c1992) for the provision of covered swimming pool, plant room, lobby, the retention of existing Health Club and extension of existing Bed & Breakfast Accommodation.

4.3. Adjoining site to the West

KCC Ref:94/976: Permission granted (c1994) for bungalow.

5.0 Policy Context

5.1. Kildare County Development Plan 2017-2023

5.1.1. The subject site is not zoned in the Kildare County Development Plan 2017-2023 and is in the rural area.

5.1.2. The appeal site is located within Rural Housing Policy Zone 1 – more populated areas with higher levels of environmental sensitivity and significant development pressure.

5.1.3. In relation to specific housing needs it is an objective of the Council to:

SNO 1 Support: (a) The provision of housing for groups with specific housing needs, including the elderly, people with disabilities, the homeless, those in need of emergency accommodation and Travellers, at appropriate locations and in accordance with the policies and objectives of this Plan. (b) Geographical balance in the provision of housing for groups with specific housing needs

SNO 10 Facilitate the provision of accommodation close to key services and public transport facilities that are appropriate to the needs of persons with disabilities in conjunction with the HSE, voluntary bodies and the private sector.

5.1.4. Relevant Policy.

SN1 Seek to ensure that groups with special housing needs, such as the elderly, people with disabilities, the homeless, those in need of emergency accommodation and Travellers are accommodated in a way suitable to their specific needs.

SN09 Facilitate the provision of purpose-built standalone dwellings within mixed schemes for people with special needs in conjunction with voluntary groups and other agencies.

- HS01 Support the provision of after-care facilities for vulnerable groups (such as older people, people undergoing addiction treatment, people with disabilities, etc.) within appropriately located and designed Primary Health Centres, in order to improve social inclusion across the county
- HS02 Support the increased provision of accessible and equitable primary care and mental health services at appropriate locations across the county.

5.2. Built Heritage

The appeal site is located in an area rich in archaeological heritage with the following recorded monuments located with a c200m radius of the site:

- KD02502 Remains of building found in the vicinity of Cloncurry Crossroads to the north/ northeast of the appeal site
- KD00072 Medieval settlement recorded c200m to the southeast
- KD00076 Church located to north (on the opposite side of the R148)
- KD02503 Graveyard located to north (on the opposite side of the R148)
- KD00074 Mott located to north (on the opposite side of the R148)

5.3. Natural Heritage Designations

The appeal site is not located on or adjacent to any designated site. There are a number of pNHA in the wider area, the closest being The Royal Canal pNHA is located to the c350m to the north.

The River Boyne and River Blackwater SAC (site code:002299) is located c10km to the north and the Ballynafagh Lake SAC (Site Code 001387) is located c13km to the south

5.4. EIA Screening

Having regard to the nature and scale of the proposed development and the absence of any connectivity to any 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

This is a first party appeal lodged on behalf of St. James Resources Centres LTD against the decision of the Kildare County Council to refuse permission for the proposed development under KCC Ref. No.21/1289. The issues raised in the grounds of appeal are set out below:

- The premises has operated as a residential facility since 2001. The original change of use from a dwelling to use for up-to 6 persons and 2 carers was determined to be exempted development (ABP REF RL.2224 [February 2005]).
- They consider that the repair of fire damage (on a like for like basis) may not require planning permission and that outside of any appeal process the applicant may have a legitimate right to refurbish the fire damaged building and continue the exempted development use. They ask the Board to allow the appellant to continue the long-established rehabilitation use at the site.
- The premises is fully in line with government policy and is supported by the HSE
- They ask the Board to consider the small scale and limited nature and extent of the proposed rehabilitation centre.
- They do not get large volumes of visitors on a regular basis and there is no major need for parking on site. The site is fully served by public transport (there is a bus stop adjoining the site)
- They accept that the site is typical of a rural location in Co. Kildare. The ad-hoc residential development referred to in the planning officer report was approved by the planning authority over a long period of time.

- They do not accept the planning authority's interpretation of Kildare County Development Policy HS01 and HS03 relating to the provision of 'rehabilitation services' within primary health centres. There is no Primary Health Care facility in the country that provides rehabilitation (residential). The planning authority are confusing the proposed use - rehabilitation (residential) with drug treatment programmes that would be administered by the HSE. The proposed rehabilitation (residential) use is not suitable to be located within Primary Care Centre setting.
- The current site location has proven to be an excellent location for the large number of clients that have successfully managed to recover from addiction and get back to employment or back to their family. there is no factual evidence or government policy or local planning policy that support the views expressed by the planning authority in the planning application
- The design and layout of the proposed building meets the specific needs of the appellant and does not have any adverse impact on adjoining dwellings.
- The proposed footprint of the building would be smaller than the footprint of the fire damaged building
- The appellant is seeking planning permission to repair and rebuild the existing fire damaged building to a modern standard in terms of building regulations, fire safety and accessibility.
- The appellant has engaged consultants to conduct a site characterisation report including reviewing hydrological data and carry out site characterisation testing of the subject site. Testing concludes that the site is suitable for an on-site treatment system subject to good practice.

6.2. Planning Authority Response

Kildare County Council have confirmed in their submission (6th Jan 2021) that they have no further observations relating to the appeal and that they are satisfied that the reports on file deal with the issues raised. They request that the Board uphold their decision.

6.3. Observations

Observation received on behalf of Declan and Janet Keoghegan:

- The exemption under Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 allows for the use of the dwelling 6 residents and 2 carers. They request the board to uphold their determination under 09.RL2224 and confine the use and numbers to that which has been determined which they consider appropriate for a small rural community.
- They have no objection to the repair of the fire damaged building or the replacement on a like for like basis. They do however have serious concerns regarding the intensification of services.
- The intensification of bed spaces (8 double bedrooms) together with the use of the other property (bungalow to the west) would represent a sizable increase in numbers. They do not consider this small scale.
- Planning permission has not been sought for works carried out on site including works of demolition, the infilling of the swimming pool and internal construction works. They contend that works carried out on site are not exempted development. They have submitted extracts from the St. James Camino Enfield Newsletter and photographs as evidence of works carried out without planning permission
- They outline a number of concerns relating to the management and operation of the facility, including the lack of employees /medically qualified staff, the lack of oversight from any regulatory authority and the lack of compliance with planning regulations, building control, fire and health and safety guidelines etc.
- They contend that the proposed rehabilitation facility offering 13-week temporary accommodation, would not accord with the objectives of the Kildare County Development Plan relating to Specific Needs Housing (i.e. objectives SN1 and SN 09)
- They agree with Kildare County Council's view that the location of this development in an undesignated and un-serviced rural area is not an appropriate location

- The site is not fully served by public transport. There is only one bus service which operates between Mullingar and Dublin. This is a single decker bus every hour. It does not serve Kildare.
- The site is unsuitable for an on-site wastewater system for a development of this scale. The specification proposed by Biocycle, based on information provided to them by the applicant would not be sufficient to comply with the regulations based on maximum occupancy
- They request a plan to be included for the treatment of pigeon fowl waste from the pigeon lofts.

7.0 **Assessment**

7.1. Introduction / Background

7.1.1. Having examined the application details and all other documentation on file, and having regard to relevant planning policy and guidance, I consider that the main issues in this appeal are as follows:

- The Principal of the Use the Building for Residential Rehabilitation
- Traffic
- Water Services
- Other
- Appropriate Assessment

I am satisfied that all other issues were fully addressed by the Planning Authority and that no other substantive issues arise

7.2. The Principal of the Use the Building for Residential Rehabilitation

7.2.1. St. James Resources Centres LTD are seeking retention permission to continue the use of a building at Cloncurry, Enfield, Co. Kildare (when refurbished) for residential rehabilitation use. In accordance with the details submitted the building was used as

a drug and alcohol rehabilitation facility since 2001 until it was damaged by a fire in 2018. Permission was refused by Kildare County Council on the basis of its location in an undesignated and unserviced rural area, on the grounds that it would constitute a haphazard and unsustainable form of development that would be seriously injurious to the rural character of the area.

- 7.2.2. It would appear from the information on file that the facility operated without the benefit of planning permission. However, it is noted that a declaration of exemption under Section 5 of the Planning and Development Act 2000 (as amended) was issued by An Bord Pleanála (ABP Order 09/RL.2224) in 2005 on the following question: '*Whether the change of use of 2 dwellings at Cloncurry Cross, Enfield, Co. Kildare to residences for up to 6 persons and 2 carers in each dwelling, is or is not development or is or is not exempted development*'. The declaration relates to both the appeal site and the neighbouring dwelling to the west. The Board determined that the use was exempted development under Class 14 (f) Part 1, Schedule 2 of the Planning & Development Regulations, 2001 (please refer to Section 4.0 of this report for further details).
- 7.2.3. While it is unclear as to whether the facility operated within the conditions / limitations of Class 14(f) i.e. that *The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2*, in the absence of any information to the contrary I consider that it would be reasonable to conclude, on the basis of the information available that there is an established historical use of this premises for rehabilitation (residential) and therefore, notwithstanding its location in an undesignated and unserviced rural area, I have no objection, in principle, to the continuation of use of this use. The question that arises is whether the works proposed under this application would comprise or facilitate an intensification of use beyond that the scope of Class 14(f) and if so whether the scale of development proposed is acceptable at this location.

Intensification of Use

- 7.2.4. Permission is sought to repair, rebuild and extend the existing fire damaged building on site. The total floor area of the extended single storey building will be 582.9m² which in accordance with the details submitted will be smaller than the footprint of the original fire damaged building. The proposed extension is I consider compatible with the existing structure on site, and I am satisfied that the site can accommodate a development of the scale and design proposed without having a significant negative impact on the amenities this rural area.
- 7.2.5. The works proposed would allow for the provision of 8 double bedrooms for services users, operating in a '2 bed buddy co-dependent system'. This would allow for an occupancy rate of up to 16 persons, c2.5 times the occupancy limitation imposed under Class 14(f). In relation to staff numbers, I note from the site characterisation report submitted in support of the appeal, that the facility will cater for three full time and two part-time staff members. On this basis I consider that the works proposed have the potential to facilitate an intensification of use on site beyond the scope of Class 14(f) with potential impacts arising as a result of increased traffic generation, parking demand and increased loading on the effluent treatment system. These potential impacts are considered in more later in this report.

7.3. Traffic and Parking

- 7.3.1. The proposed development is to be accessed through the existing vehicular entrance off the L1007 to the east. This entrance is well laid out with adequate visibility in either direction. The existing entrance is located c50m to the south of the junction with the R148. The proposed development, due to its nature and scale is I consider unlikely to generate significant traffic movements and I am satisfied that the local road network is of sufficient standard to cater for any additional traffic generated. In addition, I am satisfied that there is sufficient space available within the curtilage of the site to accommodate the likely parking demand generated by this development.

7.4. Wastewater Treatment and Disposal.

- 7.4.1. The subject site is currently serviced by a private well and septic tank system. The applicants had originally proposed to utilise both the existing well and septic tank system to serve the proposed rebuilt and extended building. However, the planning authority were not satisfied that sufficient information had been submitted to demonstrate that the site is suitable for the provision of an on-site wastewater system to cater for the proposed development and permission was refused (in part) on this basis (Refusal Reason No.2 relates).
- 7.4.2. In accordance with the details submitted in support of this appeal, the applicants engaged consultants to conduct a Site Characterisation Report including hydrological data and to carry out site characterisation testing of the subject site. The results, including a completed site characterisation form and wastewater loading form have been included as part of the appeal documentation.
- 7.4.3. As per the details submitted the site is located within a 'Locally Important Aquifer' with a moderate vulnerability. Bedrock was not encountered on-site at a depth of 2100mm below ground level. Ground water was encountered on-site at a depth of 1800mm below ground level, while mottling indicated the highest seasonal water table was recorded at 1300mm below ground level
- 7.4.4. The EPA Code of Practice 2021 indicates that the site falls within the R1 response category where an on-site system is acceptable subject to normal good practice.
- 7.4.5. Percolation test results show an average T-Test Value of 16.53min/25mm and an average P-Test Value of 13.47 min/25mm which indicate good to moderate permeability with relatively fast percolation rates. Based on the findings and recommendations of the Site Characterisation Report etc, it has been recommended that a Biocycle 16PE package wastewater treatment system designed in accordance with the EPA Code of Practice, 2021 and the EPA Wastewater Treatment Manual 1999 (treatment systems for small communities, business, leisure centres and hotels) and 120msq of raised soil polishing filter be installed on site.

- 7.4.6. While it would appear from the documentation submitted with the appeal, including site layout plan (Drawing No. 622 C01), that minimum separation distances within the site have been achieved, I note that the layout plans submitted do not detail the exact location of all septic tank / wastewater treatment systems and wells on adjoining sites, particularly the site to the west. In addition, I note from the reports on file, that the Environmental Health Officer, is of the opinion that the existing well on site is not in the location shown on the site layout plan, and I am not satisfied that this matter has been adequately clarified in the appeal documentation.
- 7.4.7. The proposed system has been sized and designed to cater for a population equivalent of 16. It would appear from the site characterisation report (Appendix E, EPA Wastewater Loading Form) that the proposed system has been sized and designed to accommodate the loading generated by 13 occupants (accommodation domestic), 3no full-time and 2no part -time staff members and 3no. visitors. However, as the proposed facility has a potential occupancy rate of 16 persons (excluding staff and visitors) I am concerned that the proposed system may be undersized.
- 7.4.8. Therefore, while I would support in principle the upgrading of the existing septic tank system to current EPA standards, I cannot conclude, with certainty, on the basis of the information available, that the proposed wastewater treatment and disposal system has been sufficiently sized, designed and located to ensure that it would not pose a risk to public health, and I recommend that permission be refused on this basis.

7.5. Other

- 7.5.1. Reference has been made in the submissions and observations received to works having been carried out on site in the absence of planning permission. Such works include the partial demolition of the fire damaged structure and the infilling of the swimming pool. I note however that the matter of planning enforcement falls under the jurisdiction of the planning authority and therefore I do not consider that the Board is in a position to draw any conclusions in relation to the matters raised.

7.5.2. Issues raised by third parties in relation to the management and operation of the facility fall outside the scope of the planning appeal. Issues of compliance with building regulations, health and safety and fire safety etc will be evaluated under separate legal codes and thus need not concern the Board for the purpose of the appeal.

7.6. Appropriate Assessment

7.6.1. Having regard to the nature and small scale of the proposed development and the distance from 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 that planning permission for this development be refused for the reason set out below.

9.0 **Reasons and Considerations**

1.	Insufficient information has been submitted to demonstrate to the satisfaction of the Board that the proposed on-site wastewater treatment system has been adequately sized, designed and located to ensure the safe and adequate disposal of effluent on site in accordance with current EPA standards. Consequently, if permitted the proposed development would be prejudicial to public health and would therefore be contrary to the proper planning and sustainable development of the area.
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Lucy Roche
Planning Inspector

7th September 2022