



An
Bord
Pleanála

Inspector's Report

ABP-313754-22

Development

Permission for the demolition of stable block. Alterations and a two storey extension to dwelling house.

Extension of the house to provide living accommodation for a dependent relative. A new wastewater treatment system and associated site works.

Location

Proleek Acres, Ravensdale, Dundalk, Co Louth

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

211445

Applicant(s)

Fearghal Connolly and Lisa Kenna

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellant(s)

Cian Clancy

Observer(s)

Ronan Denny

Paul Clancy

Date of Site Inspection

19th October 2022

Inspector

Ian Boyle

1.0 Site Location and Description

- 1.1. The appeal site is in a rural area in north County Louth. The address is Proleek Acres, Ravensdale, Dundalk, Co. Louth, A91 V386. There is an existing cottage on the property, which is setback roughly 15m from the roadside. It has an existing floor area of 171sqm.
- 1.2. The R174 (Ravensdale – Drumnasillagh Road) runs along the front boundary of the site, which is its southwestern boundary. The site is accessed via a timber gated entrance with stone pillars on either side. There are single storey stables to the rear of the property, situated behind the cottage, and are not visible from the public road.
- 1.3. There is a mature and deep hedgerow running along the majority of the property frontage. There are large conifer trees both on the subject site and adjoining lands.
- 1.4. The character of the surrounding area is rural in nature and the predominant land use is agriculture. Dwellings are mainly detached houses on spacious plots. There are houses on the adjoining sites to the east and west.
- 1.5. Ravensdale village is approximately 1.4km to the northeast.
- 1.6. The site has a stated area of 0.2ha.

2.0 Proposed Development

- 2.1. The proposed development is for demolition of the existing stables, a two-storey extension and alterations to the existing cottage, new wastewater treatment system and associated site works.
- 2.2. The house extension is intended to provide living accommodation for a dependent relative.
- 2.3. The Planning Authority requested further information on 27th January 2022 including soil permeability testing and photographs of soakpits undertaken on the site to determine the infiltration characteristics of the site (Item 1), further details of the proposed effluent treatment system (Item 2), confirmation that the site identified in the application documentation is an accurate representation of the Applicant's legal interest in the land (Item 3), and that revised newspaper and site notices should be submitted if the further information is deemed 'significant' (Item 4).

- 2.4. The Applicant submitted further information on 17th February 2022.
- 2.5. The Planning Authority issued a letter to the Applicant on 28th March 2022 requesting further details regarding soil permeability tests and infiltration characteristics of the site.
- 2.6. The Applicant responded on 29th April 2022.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. The Planning Authority issued a Notification of Decision (NoD) to Grant Permission on 12th May 2022, subject to 5 no. conditions. The conditions are standard in nature.

3.3. Planning Authority Reports

3.3.1. Planning Report

- The proposed house extension would be 162sqm. The new house would be 268.5sqm with the internal granny flat component comprising 50sqm.
- The proposed dependent living accommodation is linked internally to the existing dwelling. It does not have separate vehicular access and would be connected to the wastewater treatment system onsite.
- The proposed extension is large. However, it is well-designed and the cottage is still legible in the overall design. The proposal would not detract from the appearance of the existing house or surrounding area. It uses similar finishes and materials.
- The application satisfies the criteria for a Family Flat / Independent Living Unit which is set out under Section 13.8.36 of the Development Plan.
- There are no concerns regarding access, traffic or transportation. The proposal seeks to use the existing entrance.
- The issue raised by a third party observer is in relation to the delineation of the site boundary. They states that it has been incorrectly drawn. However, this is a civil matter and not something for the Planning Code to decide.

- The further information submitted in relation to the proposed wastewater system and surface water runoff details is considered satisfactory.

3.3.2. Other Technical Reports

Infrastructure Section: No objection, subject to standard conditions, including in relation to drainage and management of surface water, soakaways, maintenance of visibility splays. and making good any damage to the adjoining public road post construction works.

Environment Section: No objection, subject to standard conditions, including that the proposed development must be in accordance with the EPA Code of Practice for Domestic Wastewater Treatment Systems, 2021.

3.4. Third Party Observations

- A single third party observation received by the Planning Authority from Mr Cian Clancy who resides in the property northwest of the appeal site.
- The main concern stated is that there is an error on the site location map submitted with the application and that the shared boundary, which is northeast boundary of the subject site, has been marked incorrectly.
- If the application is compared to previous planning applications for the subject property it is clear that that the northwest boundary is incorrect (Reg. Refs. 13313 and 1520).
- The previous applications show the boundary setback by 4.15m from the northern corner of the Applicant's existing house. However, the current application shows this distance increased to 9.38m, which is not correct.

4.0 Planning History

Subject Site

Reg. Ref. 1520: The Planning Authority granted permission in January 2015 for the retention for modified roof details comprising gable walls and associated site works.

Reg. Ref. 13313: The Planning Authority granted permission in August 2013 for an extension and alterations to an existing dwelling and associated site works.

Reg. Ref. 181022: The Planning Authority granted retention permission in March 2019 for alterations and an extension to an existing dwelling, including the relocation of stairs and first floor store and bathroom, and associated site works.

5.0 Policy Context

5.1. Louth County Development Plan 2021 – 2027

The *Louth County Development Plan 2021-2027* ('Development Plan') was adopted by the members of Louth County Council on the 30th September 2021. The Plan came into effect on the 11th November 2021.

Rural Policy Zone 1

The appeal site is within Rural Policy Zone 1. The description for this zone is areas 'under strong urban influence and of significant landscape value'.

Section 10.2.3 'On-site Wastewater Treatment Systems'

Louth County Council is the designated Water Authority for the assessment and approval of individual private domestic on-site wastewater treatment systems in the County. The main method of sewage disposal in rural areas is by means of individual septic tanks and proprietary wastewater treatment systems. The following objectives are considered relevant:

Objective IU 16

To require that proper supervision, installation and commissioning of on-site wastewater treatment systems by requiring site characterisation procedures and geotechnical assessments be carried out by competent professionally indemnified and suitably qualified persons.

Objective IU 17

To require that the construction and installation of all wastewater treatment systems are supervised and certified by a suitably qualified competent person as fit for the intended purpose and comply with the Council's requirements.

Objective IU 18

To require that private wastewater treatment systems for individual houses where permitted, comply with the recommendations contained within the EPA Code of Practice Domestic Waste Water Treatment Systems, Population Equivalent ≤ 10 (2021).

Section 13.8.36 Family Flat / Independent Living Unit

This section states that a family flat or independent living unit is a separate unit of living accommodation on the site of an existing dwelling unit. It is used to accommodate an immediate family member of the main household on the site. The construction of an extension or conversion of part of an existing house or garage/outbuilding to a family flat or independent living unit, is required to comply with the following requirements.

- Rationale – The need for the development must be clearly set out.
- Scale – The family flat shall be ancillary to the main dwelling and shall be modest in size and scale with a floor space that shall generally not exceed 50m².
- Integration – If attached to the main dwelling an internal link shall be provided.
- Ownership – It shall not be sold or let as an independent unit and shall remain in the same ownership as the main dwelling on the site.
- Access – It shall not have a separate vehicular access.
- Services – If the property is served by an individual onsite wastewater treatment system this system must have the capacity to accommodate any additional loading in accordance with the requirements of the EPA Code of Practice: Domestic Waste Water Treatment Systems (p.e. ≤ 10) (2021). This may result in the requirement for existing on-site systems to be upgraded to the current standards.

5.2. National Policy

- EPA Code of Practice for Domestic Wastewater Treatment Systems, 2021 ('EPA CoP').

- Design Manual for Urban Roads and Streets, 2019 ('DMURS').
- Development Management Guidelines for Planning Authorities, 2007.

5.3. Natural Heritage Designations

No natural heritage designations apply to the subject site.

The nearest European Site is the Carlingford Mountain SAC (Site Code: 000453), which is roughly 1.2km to the northeast. The site is also a pNHA (Site Code: 000453).

The Dundalk Bay SAC (Site Code: 000455) is approximately 1.9km to the south.

The Dundalk Bay SPA (Site Code: 004026) is approximately 2.2km to the south.

The Carlingford Shore SAC (Site Code: 002306) is approximately 10.5km to the east.

The Carlingford Lough SPA (Site Code: 004078) is approximately 11km to the east.

The pNHA Trumpet Hill (Louth) (Site Code: 001468) is approximately 2km to the southeast.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of appeal can be summarised as follows:

Land ownership

- The application wrongly includes land that is owned by the Appellant. This is apparent from viewing previous planning applications involving the subject site.
- No letter of consent has been obtained by the Applicant to include these said lands in the application and the application should have been invalidated by the Planning Authority as a result.

- The Site Map for the proposed development moves the shared boundary by approximately 8m to the northwest, onto the adjoining property, which is owned by the Appellant. This is incorrect.
- The source of the mapping error is the Property Registration Authority (PRA), which has been digitised incorrectly. The Appellant has notified the PRA of this error, but it has not yet been rectified. The PRA website notes this matter as 'queried' on their website.
- It should not be possible for the Planning Authority to grant permission for the application where there has been no transfer of land ownership.

Waste Water Treatment

- The inclusion of the disputed land would appear to bring the application site area above 0.2ha. This is an important consideration as the proposal includes an onsite domestic waste treatment system (DWWTS).
- Under the relevant EPA Guidelines, such a system requires the site to be at least 0.2ha. Therefore, should the application be contained solely to the original site boundaries, the proposed development could not be implemented as an appropriately designed DWWTS cannot be safely provided for on the site.

6.2. Applicant Response

The Applicant submitted a response to the Board through Lynch Solicitors. The response was accompanied by a letter from Paul Monaghan Architects.

Lynch Solicitors

- Having examined the title of the property, the boundary shown on the planning application is consistent with the Folio map.
- The Applicant's surveyor has also confirmed that the boundaries are correctly set and fully consistent with the Folio and title map.
- Therefore, the Appellant has no grounds for objecting to the application on this basis.
- Louth County Council has accepted the application as true and fair.

Paul Monaghan Architects

- Prior to making the application the boundaries of the proposed site map were overlaid on the original deed map. The maps and drawings used in the application are therefore correct and the boundaries shown in the documentation are entirely within the curtilage of the lands owned by the Applicant.
- There is sufficient land within the site to facilitate a wastewater treatment plant as designed.
- The issue was discussed with the Planning Authority to their satisfaction.

6.3. Planning Authority Response

The Planner's Report adequately deals with the main points of the appeal. The points raised in the appeal relate to a dispute over landownership and title, which lie outside the scope of the planning code.

6.4. Observations

Two observations have been received by the Board, including from Mr Paul Clancy and Mr Ronan Denny. The main issues raised are as follows:

Paul Clancy

- The Applicant has submitted an incorrect site map as part of the planning application, which encroaches onto landowner owned by Cian Clancy (son of Paul Clancy).
- Two previous applications are referenced in the third party appeal. The boundary has not been altered since that time.
- The relevant paper-based maps used for these applications were correct and the digitised maps used for the current application are inaccurate.
- It is surprising that Louth County Council has approved the proposed development on land that is only partially owned by the Applicant.

Ronan Denny

- Based on historical experiences of the land, and past use of the fields in this area, there has been a mapping error in digitising the original paper-based maps and documents.
- The correct boundary along the northwestern side of the appeal site is a straight line, going north/northwest, and originating at the left wing-wall of the entrance to the property.

7.0 **Assessment**

The main planning considerations are as follows:

- Land Ownership
- Wastewater treatment/disposal
- Appropriate Assessment

7.1. **Land Ownership**

7.1.1. The main appeal issue is regarding land ownership.

7.1.2. The Appellant states that the plans and particulars submitted with the application are incorrect and that a strip of land to the northwest of the subject site has been inaccurately represented as being owned by the Applicant. They submit that the application wrongly shows the shared boundary between the two properties as being 8m further northwest than it should be. [Figures 14 and 15 of the Appeal (Page 15) illustrates this argument graphically by using two side-by-side maps with notations.]

7.1.3. Conversely, the Applicant states that they are the owner of the land in question. This is supported by information provided by their solicitor and architect. The latter is the agent acting on behalf of the Applicant. They state they have examined the property title, and the boundaries shown on the submitted documentation, and that this is consistent with the relevant Folio map. It is also stated that a surveyor has confirmed the boundaries are correct and consistent with the relevant land title and, for this reason, the application should be taken as valid. I note also that the Planning Authority is satisfied that the strip of land is in the ownership of the Applicant.

- 7.1.4. Having reviewed the information before me, I do not consider that the information on file, or presented by either of the parties, raises sufficient doubt regarding the legitimacy of the Applicant's legal interest, such to the extent that permission should be refused. From reviewing information on the Property Registration Authority (PRA) website (landdirect.ie), I acknowledge that there is an active 'query' in relation to the property title(s) in question. This matter was still under review by the PRA at the time of writing this report.
- 7.1.5. Whilst there is clearly an ongoing dispute in relation to the matter of property rights and land ownership, the Board cannot adjudicate on such matters. In this regard, I note the provisions of Section 34(13) of *Planning and Development Act, 2000* (as amended) relating to 'Permission for Development', which states that 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'. Therefore, in the event permission is granted, there may be other legal considerations that apply, and which the landowner may need to address outside of the planning system.
- 7.1.6. I further note Section 5.13 of the Development Management Guidelines where it is stated that the planning system is not designed as a mechanism for resolving disputes about title to land, or premises, or rights over land. These are ultimately matters for resolution in the Courts. However, as noted above, I would reiterate that the Applicant must be certain under civil law to ensure that they have all rights in relation to the land for which they intend to implement any grant of planning permission.

7.2. **Wastewater treatment/disposal**

- 7.2.1. The second concern raised by the Appellant is in relation to the safe disposal and treatment of wastewater. They submit that the inclusion of the disputed strip of land brings the site above the 0.2ha threshold, which is minimum area required for the provision of a domestic wastewater treatment system (DWWTS).
- 7.2.2. The relevant guidance document for assessing a DWWTS is the 'EPA Code of Practice for Domestic Wastewater Treatment Systems, 2021 ('CoP')¹. The CoP sets

¹ The EPA Code of Practice (2021) applies to site assessments and associated wastewater treatment installations carried out on or after 7th June 2021.

out a methodology for site assessment and selection, installation, and maintenance for an appropriate DWWTS serving a single house, or equivalent development, with a population equivalent (PE) of less than or equal to 10.

- 7.2.3. The proposal seeks to replace the existing septic tank with an improved, packaged wastewater treatment system and soil polishing filter. A Site Characterisation Form was submitted with the application, and I have had regard to this. The Proposed Site Layout Map (drwg. no. 1744/102) shows the proposed location of the DWWTS on the site.
- 7.2.4. The Geological Survey Ireland (GSI) confirms that the groundwater body for this area lies between Carlingford Mountain and the coast. The topography is gently sloping. The main surface water flow direction is eastwards and eventually discharges into Dundalk Bay. The GSI online mapping system shows that the location of the new wastewater treatment plant would be within an area that has an aquifer category of 'Locally Important Aquifer – Bedrock, which is Generally Moderately Productive' with a vulnerability described as 'high'. This represents a GWPR of R1 under the EPA Code of Practice (2021) (i.e., 'acceptable subject to normal good practice'). I consider the information outlined in the Site Characterisation Form is consistent with the ground conditions and physical features observed during my site visit.
- 7.2.5. The information on file indicates that a trial hole with a depth of 2.5m was recorded and that mainly silt and clay soil with cobbles was present. No bedrock or groundwater is referenced as being encountered as part of the infiltration tests. In relation to the percolation characteristics of the soil, a sub-surface percolation test result (T-value) of 21.61 min/25mm was recorded, which means the proposed method of wastewater disposal is acceptable (i.e., secondary treatment system with polishing filter).
- 7.2.6. The CoP (Table 6.3) specifies minimum separation distances from various sensitive receptors and key features, so that a new effluent treatment system can safely discharge to ground. This includes setbacks from domestic wells, surface water features, soakaways, dwellings, roads, site boundaries, amongst others. The proposed DWWTS is sufficiently setback from these types of features, including the existing onsite dwelling, site boundaries and road.

- 7.2.7. Having regard to the Site Characterisation Report, including the site percolation test results, I consider it has been demonstrated that the property can accommodate a domestic wastewater treatment system. I note the Planning Authority's Environment Section did not raise any concerns in relation to this aspect of the development, subject to conditions requiring the proposal to comply with the 'EPA Code of Practice for Domestic Wastewater Treatment Systems, 2021'.
- 7.2.8. I further note that the new packaged treatment system would comprise an upgrade to an existing septic tank that is already operating onsite. Therefore, I do not consider that the proposed development would present a significant risk to groundwater pollution or be prejudicial to public health.
- 7.2.9. Therefore, having regard to the above, I am satisfied that it has been demonstrated by the Applicant that the site can accommodate the proposed DWWTS and that an appropriately designed system can be safely installed and maintained on the property.

7.3. Appropriate Assessment

- 7.3.1. Having regard to the nature and small scale of the proposed development, which comprises a two-storey extension and alterations to an existing cottage and new wastewater treatment system, and which would present no significant risk of groundwater pollution, no Appropriate Assessment issues arise. I note that the new secondary wastewater treatment system with polishing filter would be an improvement on the existing septic tank that is already operating on the site.
- 7.3.2. There is small reservoir roughly 160m to the northwest of the subject lands. However, the appeal site is situated downgradient, and the main surface water flow is towards the south and east, respectively, which is away from this body of water.
- 7.3.3. A tributary of the Flurry River is approximately 700m to the east. However, this is separated from the site by the R174 (the Ravensdale – Drumnasillagh Road) which runs along the front of the site, and other roads beyond that.
- 7.3.4. Therefore, 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 be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the *Louth County Development Plan 2021-2027*, *EPA Code of Practice for Domestic Wastewater Treatment Systems (2021)*, the nature, design, and location of the proposed development; and type of development in the surrounding vicinity; it is considered that, subject to compliance with the conditions set out below, proposed development would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 17th February 2022 and 29th April 2022, respectively, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed granny flat extension / independent living unit shall be used solely for that purpose and shall revert to use as part of the main dwelling on the cessation of such use.</p> <p>Reason: To protect the amenities of property in the vicinity.</p>
3.	<p>(a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning</p>

	<p>authority and in accordance with the requirements of the document entitled the 'Environmental Protection Agency Domestic Waste Water Treatment Systems (Population Equivalent ≤10) (2021)'. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.</p> <p>(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.</p> <p>(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.</p> <p>(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.</p> <p>(e) 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 and that the polishing filter is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Surface water drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>

5.	<p>Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity</p>

Ian Boyle
 Planning Inspector

7th November 2022