



An
Bord
Pleanála

Inspector's Report

ABP-314899-22

Development

A two-storey dwelling house along with all necessary ancillary site development works, including connections to previously approved road and drainage services under planning reference no. 21/554.

Location

Site no. 2, Grange Road, Ballina, Co. Tipperary.

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

22417

Applicant(s)

James Dooley

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

James Dooley

Date of Site Inspection

21st July 2023

Inspector

Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.00347 hectares, is located in the settlement of Ballina and on the northern side of Grange Road. The appeal site is an undeveloped site part of a larger land holding on which a two-storey dwelling has been constructed to the south and a partially completed service road has been constructed along the east side of the site to facilitate development of the landholding.

2.0 Proposed Development

2.1 Permission is sought to construct a two-storey dwelling house along with all necessary ancillary site development works including connections to previously approved road and drainage services under planning ref no 21/554. The proposed dwelling has a floor area of 174.2sqm and a ridge height of 9.873sqm. The dwelling features a pitched roof with external finishes of mainly plastered walls, some stone elements and blue/black roof sales or tiles. The proposed dwelling is accessed off an existing service road with vehicular access off Grange Road. This access road runs on a north south axis along the eastern side of the site and provides access to an existing dwelling to the south and possible future development on the lands to the north.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on two reasons...

1. Having regard to the deficiencies in the capacity of Ballina Wastewater Treatment System and the likely timeframe for the deficiency to be resolved, the Planning Authority considers that the proposed development is premature pending the upgrade of the Ballina Wastewater Treatment System. It is therefore considered that the proposal would be contrary to the proper planning and sustainable development of the area.

2. The site is zoned Amenity in the Ballina Settlement Plan, as set out in the Tipperary County Development Plan 2022-2028 where residential development is specifically not permitted. Having regard to the land use zoning objective and the land use zoning matrix, it is considered that the proposed development is not acceptable. The proposed development would, therefore, materially contravene the objectives of the Development Plan and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (28/07/22): Further information required including submission of revised drawings to provide plans that correspond to the elevations submitted, provision of a pre-connection enquiry reply with Uisce Eireann having regard to capacity constraints.

Planning report (22/09/22): Uisce Eireann have noted that no public sewer connection is available presently and the proposal is premature pending upgrade works. A change in the zoning of the site is noted with the site rezoned Amenity under the Tipperary County Development Plan 2022-2028 on which residential is not permitted. Refusal was recommended based on the reasons outlined above.

3.3. Prescribed Bodies

Uisce Eireann (05/10/22): Water connection feasible without upgrade, wastewater connection not feasible at this time with the Ballina WWTP operating above capacity and a sewer network extension also required.

3.4. Third Party Observations

3.4.1 No submissions.

4.0 Planning History

No planning history on the site.

Adjoining lands/immediate vicinity...

21/554: Permission granted for an estate road with footpath, services, public lighting and landscaping. The proposed dwelling is to connect into this infrastructure, which is partially in place on the site adjoining the appeal site.

20/984: Permission granted for construction of a two-storey dwelling house and associated site works including the entrance onto Grange Road. This dwelling is constructed and is located to the south of the appeal site.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Tipperary County Development Plan 2022-2028.

The site is located within the settlement boundary of Ballina as defined under the Tipperary County Development Plan under Volume 2 Settlement Guide and Settlement Plan. Ballina is defined as a Local Town. The appeal site is zoned Amenity under the Settlement Plan with a stated objective 'to provide, preserve and enhance open space and amenity uses'. The Zoning Matrix (Table 1.3, Volume 2) indicates that residential development is not permitted within this zoning objective.

5.2 Natural Heritage Designations

None within the zone of influence of the project.

5.3 EIA Screening

Having regard to the nature and scale of the proposed development, comprising of construction of a dwelling house and driveway in an urban area, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by Stephen Dowds on behalf of James Dooley. The grounds of appeal are follows...

- The background of the case is set out noting that previous applications on these lands were assessed under the previous 2010 Development Plan with the lands zoned for low to medium residential development and that the zoning of the site and wider lands has been changed to Amenity under the current Development Plan. The planning history is outlined with permission granted on the lands the site is taken from for a service road and a dwelling to the south, which are in place or partially complete.
- In relation to wastewater the appellant notes that the lands in question are serviced with the works permitted under ref no. 21/554 now mostly complete and that only one dwelling can avail of the permitted services. The issue of wastewater treatment will be resolved in the near future and the sewer connection required has been provided and connected to the public system to serve the house constructed to the south of the site, In relation to capacity of the WWTP the existing plant is overloaded however upgrading works are imminent and were granted under ref no. 21/487 with works expected to be complete in 2024 and within the life of a 5 year permission. The appellant suggests an appropriate condition that the house not be occupied until upgrading works are complete.
- In regards to the change in zoning the refusal of permission disregards the fact that roads, services for this house and potentially four more have already

been permitted and this is an extant permission unaffected by zoning. A refusal of permission would result in a ghost estate with one finished house and services and road infrastructure for five more. This conflicts with the zoning objective and objectives of the development plan to achieve good planning.

- The appellant argues that principle of housing development on these land has been established by ref no. 20/894 and 21/554 and that such is not in conflict with the plan in general or the zoning and that permitting houses on a site with permission in principle is not in conflict with the plan in general or with the zoning and would allow for completion of development permitted in principle.
- The proposal is also in keeping with other policy objectives of the plan including section 7.2.4 enabling urban infill/brownfield development.
- The appellant refers to instances in which the Board may grant permission in contravention of the plan with particular reference to Section 37(2)(b) (iii) of the Planning and Development Act. The appellant refers to the Development Plan Guidelines for Planning Authorities, June 2022 and a sequential approach to zoning lands noting that removing the residential zoning in this case prefer undeveloped greenfield sites over a party developed brownfield site in conflict with the guidelines sequential test. The appellant also points of that the decision not to retain the residential zoning is based on faulty information and analysis referring the Serviced Land Assessment in Volume 2 and the lands should have been classed as having existing infrastructure.

6.2. Planning Authority Response

6.2.1 No response

7.0 Assessment

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

Wastewater capacity

Zoning policy

Design, scale and pattern of development

7.2 Wastewater capacity:

7.2.1 The first refusal reason related to lack of capacity in the existing Ballina WWTP. The Uisce Eireann submission confirms this to be the case and noted that a 36m sewer extension is required. The appellant has noted that the sewer extension is now in place and highlights the infrastructure that has been implemented connected with this site and permitted under ref no. 21/554. The appellant argues that the upgrade of the WWTP is imminent and will be within the life of the permission and suggests a condition in event of a grant of permission.

7.2.2 In this regard the current situation is that the existing WWTP is operating at capacity and that the proposal would be premature pending upgrade of such. This is confirmed by Uisce Eireann. I would acknowledge that the upgrade works are planned and permitted, however I can see no reason or justification to go against the recommendation by Uisce Eireann. In this regard I would recommend that permission be refused on the basis that the proposal is premature pending upgrade of the Ballina Wastewater Treatment Plan and to permit development would be contrary to the proper planning and sustainable development of the area.

7.3 Zoning Policy:

7.3.1 The appeal site is part of a larger landholding, which was previously zoned Low/Medium density under the North Tipperary County Development Plan, 2010. There is a planning history on these lands including permission granted for a dwelling to the south of the appeal site under ref no. 20/894 and permission granted for an estate road, footpath, services, public lighting and landscaping under re no. 21/554. The dwelling permitted has been constructed and the services subject to ref no. 21/554 area are at an advanced stage of construction and will serve the proposed dwelling and potential future development of the lands the site is taken from. It is notable that the appeal site and the lands they are taken from was rezoned

under the Tipperary County Development Plan 2022-2028 and is now zoned Amenity with a stated objective 'to provide, preserve and enhance open space and amenity uses'.

7.3.2 Firstly I would highlight that under land use zoning policy that residential development is not permitted within the Amenity zoning of the site and such clearly indicated under the zoning matrix, Table 1.3 of Volume 2 of the Tipperary County Development Plan. In this regard the proposal for a dwelling would constitute a material contravention of the zoning objective of the Tipperary County development Plan 2022-2028.

7.3.3 I would refer to Section 37(2)(b) of the Planning and Development Act, 2000 (as amended).

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under [section 28](#), policy directives under [section 29](#), the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

I would consider that the proposed development does not come under the scope of the conditions and limitations set out under Section 37(2)(b). The development is not

of strategic or national importance, I do not consider there is demonstration of conflicting objectives in the development plan and also I do not consider the proposal merits granting having regard to regional guidelines of Section 29 guidelines or section 29 policy directives. In relation to pattern of development and permission granted in the area, this does not apply as such refers to permission granted in the area since the making of the development plan. I would be of the view that the conditions are not in place to allow the Board grant permission in material contravention of the adopted Development plan in the case of development refused on the ground of material contravention.

7.4 Design, scale and pattern of development:

7.4.1 The proposal was not refused on this basis and was deemed acceptable in the context of overall design and scale. I would be concur with this view and would consider that the overall design and scale of the development is acceptable in the context of visual impact, adjoining amenity and traffic safety with such using a permitted access point that also serves the existing dwelling to the south.

8.0 **Appropriate Assessment**

8.1 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.

9.0 **Recommendation**

9.1 I recommend refusal based on the following reasons.

10.0 **Reasons and Considerations**

1. The appeal site is zoned Amenity under the Tipperary County Development Plan 2022-2028 with a stated objective 'to provide, preserve and enhance open space and amenity uses'. The Zoning Matrix (Table 1.3, Volume 2) explicitly indicates that residential development is not permitted within this zoning objective. The proposed development would constitute a material contravention of the land use zoning objective of the Tipperary County Development Plan 2022-2028. The proposed development would, therefore, be contrary the proper planning and sustainable development of the area.

2. Uisce Eireann have confirmed that the existing Ballina Wastewater Treatment Plant is operating at capacity and that the connection of the proposed development to such is not feasible until planned upgrade works are carried out. In this regard the proposal would premature pending upgrade of the Ballina Wastewater Treatment Plant. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that the report represents my profession planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

Colin McBride
Senior Planning Inspector

24th July 2023