



An
Bord
Pleanála

Inspector's Report

ABP-315285-22

Development	Renovations and alterations to an existing house, septic tank and percolation area and provision of a gravel parking area and other associated site work.
Location	Townlough Upper, Portroe, Nenagh, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	2260397
Applicant(s)	Martin Flynn.
Type of Application	Retention Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	James O'Murthuile.
Observer(s)	None.
Date of Site Inspection	31 st July 2023.

Inspector

Peter Nelson

1.0 Site Location and Description

1.1. The site is located on a local tertiary road shared with two other properties and in the townland of Townlough. The site is c. 13 km west of Nenagh and 3.9km southwest of Portroe. The elevated site is located on the edge of the Arra Mountains and overlooking Lough Derg. Directly to the southwest is a dwelling at a lower level. The site is accessed by a gravel laneway. On the site, there is a recently refurbished single-storey dwelling. Surrounding the dwelling is a gravel hardstand area. The stated site size is 0.38 hectares, and the gross floor area of the existing dwelling is 30.36 sqm.

2.0 Proposed Development

2.1. Retention permission is sought for the renovations and alterations to an existing house, septic tank and percolation area and provision of gravel parking area and other site works.

3.0 Planning Authority Decision

3.1. Decision

Tipperary County Council issued a decision to grant permission on 16th November 2022, subject to 4no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first planning report dated the 13th September 2022, recommended that the applicant submit proposals to regularise all unauthorised development on site and submit supporting evidence confirming the structure's condition and use before renovation. The planning report highlighted that the use of the structure for Airbnb was not addressed under the current application. Clarity on this use was not part of the Further Information request.

The second planning report, dated the 16th November 2022, can be summarised as follows:

- After reviewing the planning history and further information, no evidence supports that the structure is not a dwelling.
- The retention of the gravel parking area and other associated site works are acceptable.
- The development complies with the Tipperary County Development Plan 2022-2028 policies and objectives.

3.2.2. Other Technical Reports

The report from the Senior Executive Engineer, Road and Transportation, dated the 26th August 2022 states that the volume of traffic and operational speed are low, and the sightlines are good and improved by a public footpath at the junction.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

There was one observation received on the planning file. The main points raised can be summarised as follows:

- The site has a history of planning refusals and enforcement.
- The public notices are misleading the Council.
- The building is derelict, and there is no permission for habitual use of it.
- The building is not 'substantially intact.'
- The property has been listed on Airbnb.
- The site's boundaries have taken in lands which are not in the applicant's ownership.
- There is no planning permission for any vehicular access to the site for the purpose of residential.

4.0 Planning History

P.A. Ref: 21/933 Application deemed withdrawn on the 25th February 2021 for renovations and alterations to the existing dwellinghouse, retention of a gravel parking area to front and retention of small shed/pumphouse to the rear of the house and retention of a new door (in place of a window to rear gable) and all associated site works.

P.A. Ref: 08/510169 Application withdrawn on the 10th July 2008 for renovation and refurbishing of the existing house and to install new proprietary treatment plant and percolation area and all ancillary works.

P.A. Reg: 06/511511 Permission refused on the 1st March 2007 to renovate and extend the existing house, install a new proprietary treatment plant and percolation area and make good/repair existing access roadway. The application was refused for the following three reasons:

1. It is the policy HSG 9 of the Council that in considering the reuse or replacement of existing dwellings in the open countryside, the Council will have to be satisfied that: -
 - a) The existing structure was last used and/or is suitable as a dwelling;
 - b) The roof, external and internal walls are substantially intact but the building is unsuitable for modern use;
 - c) The proposed extension/dwelling will be designed strictly in accordance with the guidelines contained in Chapter 8 and Appendix 2;
 - d) The proposed floor area shall accord with guidelines on plot sizes as set out in Section 8.4.1 and in any case be not greater than 200 sqm or twice the existing floor area (whichever is greater).

2. The Council considers that the applicant does not comply with the policies as set out in Policy HSG9 of the Plan as the proposed extension is proposed to a

dwelling which is not substantially intact. Accordingly, the proposed development would materially contravene the objectives of the 2004 County Development Plan and would be contrary to the proper planning and sustainable development of the area.

3. The site is located in a Vulnerable Landscape where it is required that it be shown that proposed developments would not impinge in any significant way upon the character, uniformity and integrity of the landscape when viewed from the surrounding area. It is considered that the proposed development by virtue of its inappropriate design in an elevated and exposed location above the shores of Lough Derg would materially contravene Policy ENV2 of the Development Plan.
4. The road which would serve the proposed development is unsuitable to carry increased traffic which would be likely to result from the proposed development due to deficiencies in its width and surface treatment. The Planning Authority consider that the additional traffic movements generated by the proposed development along this narrow and substandard lane would endanger public safety by reason of traffic hazard.

P.A. Reg: 03510816 Permission granted on the 28th November 2003 for a single storey extension to existing dwellinghouse, new front entrance and boundaries, septic tank, percolation area and ancillary works.

Enforcement

P.A. Reg: TUD 20-074 Case open regarding unauthorised development.

5.0 Policy Context

5.1. Development Plan

The Tipperary County Development Plan 2022-2028 is the operative Development Plan for the area. This plan came into effect on 22nd August 2022.

Strategic Objective SO7

To protect, enhance and connect areas of natural heritage, blue and green infrastructure and waterbodies, for quality of life, biodiversity, species and habitats, while having regard to climate change adaptation and flood risk management measures.

Policy 5 -1 Have regard to the County Housing Strategy (or any amendment thereof), when implementing housing programmes, and when assessing proposals for both private and public residential development, to ensure that new housing is provided, and located in a manner that caters for the diverse housing needs of the community, suitable for households of a range of incomes and in tandem with the delivery of social and community infrastructure and amenity.

Policy 5 -15 Facilitate, where it is demonstrated by an applicant that a dwelling is no longer suitable for habitation, its replacement with a new dwelling.

Policy 5 – 11 Facilitate proposals for dwellings in the countryside outside of settlements in accordance with NPF Policy NPO 19 for new Housing in the Open Countryside, and designations illustrated in Section 5.5.1, and Table 5.2: Rural Housing Technical Principles for Applicants.

In 'Areas Under Urban Influence' and 'Primary Amenity Areas', the Council will consider single houses for persons where the criteria set out in Category 1A or B, or Category 2 hereunder are met:

Category 1: 'Economic Need'

Category 2: 'Social Need'

Policy 5 - 16 Support and encourage the appropriate refurbishment, conversion and adaptation of existing rural building stock, such as vernacular school houses, coach houses, farm buildings, where feasible, as sustainable alternatives to new build.

Policy 9 -2 In assessing proposals for tourism development, including accommodation, at locations outside of settlement centres, to consider proposals on a case-by-case basis, having regard to;

- (a) The nature and scale of the proposal in the context of its setting,
- (b) The specific need for the development to locate in the rural area and not within

a settlement,

(c) Demonstration that the development is compatible with the protection of the environment, including lakeshore and riparian habitats.

(d) The environmental conditions and sensitivities, scenic amenity, availability of services and the cumulative impact of such developments on the environment.

Policy 15 – 2 Require that all new septic tanks, proprietary effluent treatment systems and percolation areas to be located and constructed in accordance with the Water Services Guidelines for Planning Authorities (and any review thereof) and the Code of Practice for Domestic waste water treatment systems (EPA, 2021) (and any amendment) and the development management standards of this Plan as set out in Volume 3.

Policy 11 – 17 Ensure the protection of the visual amenity, landscape quality and character of designated 'Primary' and 'Secondary' amenity areas. Developments which would have a significant adverse material impact on the visual amenities of the area will not be supported. New development shall have regard to the following:

- a) Developments should avoid visually prominent locations and be designed to use existing topography to minimise adverse visual impact on the character of primary and secondary amenity areas.
- b) Buildings and structures shall integrate with the landscape through careful use of scale, form and finishes.
- c) Existing landscape features, including trees, hedgerows and distinctive boundary treatment shall be protected and integrated into the design proposal.

The site is located in a 'Primary Amenity Area' and an 'Area Under Urban Influence.'

5.2. Natural Heritage Designations

Lough Derg (Shannon) Special Protection Area is located c.2 km from the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of appeal can be summarised as follows:

- The proposed development relates to and is reliant upon the unauthorised use of a derelict structure where the residential use of the property has long since been abandoned.
- There was no power, water or waste utilities on the site until 2020/21.
- The 'residential' use of the property is a change of use of the property for which planning permission is required.
- The proposed works, therefore, relate to an unauthorised structure.
- The structure has been used for short-term letting.
- The proposed development would be contrary to Policy 5.1 of The Tipperary County Development Plan 2022-2028.
- The proposed development does not respect the visual quality of the "Primary Amenity Area".

6.2. Applicant Response

- None

6.3. Planning Authority Response

- None

6.4. Observations

- None

7.0 **Assessment**

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

- Previous Use and Condition of Building.
- Short-Term letting use.
- Compliance with Tipperary County Development Plan.
- Visual Amenity
- Appropriate Assessment

7.2. **Previous Use and Condition of Building.**

The appellant claims that the proposed use of the existing building for residential would require a change of use application to re-establish the residential use. No evidence is submitted to suggest that this building has been used for any other use than residential. While the appellant states that the house was uninhabited for 14 years since 2005/6, the applicant states that the house was regularly occupied by his family members from 2008 to 2019.

The Planning and Development Act 2000 defines 'house' as a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied. I consider that the subject building falls within this definition. While I recognised that, before the works to be retained, the dwelling was in a poor state of repair, I consider that the building was a house, and the use of this structure does not require a planning application to re-establish the residential use.

7.3. **Short-Term Letting.**

I note that the Enforcement Notice served on this property included the use of the building for short-term letting. The appellant states that short-term tourism letting has taken place. This was noted in the planning report, which highlighted an Airbnb entry for the property. In reply to the Further Information request, the applicant stated that

the house was advertised for short-term letting for a brief period and has now been discontinued. The permission sought for the dwelling does not include for short-term letting. Any potential unauthorised use of the building falls under the jurisdiction of the Planning Authority.

7.4. Compliance with Tipperary County Development Plan.

The appellant states that to permit development would contravene the provision of the settlement strategy and housing as contained in the Tipperary Development Plan, as the applicant does not fulfil the requirements of the rural housing policy (Section 5.5.1) and has not presented a demonstrable social and economic need to reside in this Primary Amenity Area. I note that Section 5.5.1 and Policy 5-11 relate to proposals for dwellings in the countryside and do not include the refurbishment of houses. I also note that Council policy (Policy 5 -16) supports and encourages the appropriate refurbishment, conversion and adaption of existing rural building stock as sustainable alternatives to new build. I, therefore, consider that, in this instance, the applicant does not need to demonstrate a social and economic need to reside in this area.

7.5. Visual Amenity

In the current Tipperary Development, Plan the site is located in a designated 'Primary Amenity Area', and the appellant argues that the development does not integrate with nor respect the visual quality of the amenity. There is no significant change in the form and design of the dwelling. I do not consider that the works to the existing building have a seriously negative impact on the visual amenity of this designated area.

The works to be retained includes an infill area of parking to the front of the dwelling. It is considered that, as the site is an exposed site, the infill parking area is incongruous to the existing landscape character. It is considered that a reduction in the scale of the parking area to the front of the dwelling along with planting of the new retaining bank and remaining area would help assimilate the new development into the landscape. If the Board is minded to grant retention permission, I recommend a condition requiring a reduction in the front parking area and a landscaping scheme to be agreed with the planning authority.

7.6. **Appropriate Assessment.**

Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. I recommend a grant of permission based on the following reasons and considerations.

9.0 **Reasons and Considerations**

Having regard to the provisions of the Tipperary County Development Plan 2022 – 2028 and the previous use of the building, it is considered that the development to be retained is in accordance with national and local planning policy and provides for the refurbishment of an existing house and subject to conditions would not seriously injure the visual amenity of the area. The development to be retained is therefore in accordance with the proper planning and sustainable development of the area.

10.0 **Conditions**

1.	The development retained and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 23rd day of October 2022 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.
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	<p>Reason: In the interest of clarity.</p>
2.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping using only deciduous trees and hedging species, details of which shall be submitted to the planning authority, and agreed in writing within three months of the grant of permission. This scheme shall include the following:</p> <p>(a) A plan to scale of not less than 1:500 showing –</p> <p>(i) Landscaping for the retaining bank to the front of the dwelling</p> <p>(ii) Soft landscaping for a minimum of 50% of the hardstand area to the front of the dwelling</p> <p>(iii) The species, variety, number, size and locations of all proposed trees and shrubs.</p> <p>(iv) Details of boundary planting.</p> <p>(b) A timescale for implementation.</p> <p>Reason: To assimilate the development into the landscape and the interest of visual amenity.</p>
3.	<p>All surface water runoff from roofs, driveways and paved area shall be collected and disposed of within the curtilage of the site by means of soak pits designated in accordance with BRE 365 standards. Surface water runoff shall not be allowed to discharge onto adjoining properties.</p> <p>Reason: To avoid interference with other properties and to prevent traffic hazard.</p>
4.	<p>A Certificate of Compliance (including photographs), prepared and signed by an Architect, Engineer, Surveyor or Technician to state that the septic tank and percolation area and associated works have been installed in accordance with EPA Code of Practice requirements fully shall be</p>

	submitted to the Planning Authority within three months of grant of permission. Reason: In the interest of public health
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

. Peter Nelson
Planning Inspector

3rd August 2023