



An
Bord
Pleanála

Inspector's Report

ABP-315946-23

Development	Retention and completion of dwelling
Location	Thomas Traynor Road, Co. Carlow
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	22426
Applicant(s)	Barney O'Toole
Type of Application	Permission and retention permission
Planning Authority Decision	Refusal for 4 no. reasons
Type of Appeal	First Party
Appellant(s)	Barney O'Toole
Observer(s)	None
Date of Site Inspection	12 th August 2023
Inspector	Bernard Dee

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1.0 Site Location and Description

- 1.1. The appeal site is located within the development boundary of Tullow town and is located to the north of Castledermot Road (R418) which leads into Tullow from the NW. The appeal site is located between Castledermot Road and the River Slaney and immediately NW of the site and on the other side of the Castledermot Road ribbon development and suburban development is the established development pattern in the area.
- 1.2. The house for which retention permission and completion permission is sought is a single storey log cabin type construction. As the land falls away from the road down to the river, a platform partly of concrete (on which the house rests) and partly of hardcore (access and forecourt areas) has been constructed to elevate the floor level of the house to road level presumably to protect against flood risk.
- 1.3. The boundary of the site is defined by a timber fence along the roadside and no landscaping works have taken place at the site to screen the development. A footpath runs along the R418 in front of the appeal site. Travelling into Tullow on Thomas Traynor Road the cabin is well screened by an existing house to the NW of the site but the cabin is totally exposed travelling along this road from Tullow towards Carlow town and very visually prominent.

2.0 Proposed Development

- 2.1. The development for which retention permission is sought is the dwelling as described above. Permission is also sought to apply a rendered board finish over the log walls to try and make the house blend in with the rendered houses along Thomas Traynor Road.
- 2.2. The house has an approximate footprint measuring 9.7m x 5.8m with a roof that is 3.4m high at its highest point. The GFS measures c. 50m² and the plan drawing shows rooms for a kitchen/dining/living area, two bedrooms and a bathroom.

3.0 Planning Authority Decision

3.1. Decision

Permission for the proposed development was refused on 3rd February 2023 for 4 no. reasons:

- 1. The development for retention is located on land that is partly zoned 'Amenity & Open Space' in the Tullow Local Area Plan 2017-2023 whereby a dwelling use is not permitted within this land use zoning as contained in Section 12.2 of the Local Area Plan. Consequently, the development would materially contravene the land use zoning objective applicable to the site which seeks 'To protect and provide for recreation, open space and amenity provision'. The development to be retained would therefore be at variance with the land use zoning applicable to the site and be contrary to the proper planning and sustainable development of the area.*
- 2. The development site adjoins the River Slaney which forms part of the 'Slaney River Valley Special Area of Conservation' (SAC Site Code 000781) and where it is an objective of the Council under Policy NS P1 of the Carlow County Development Plan 2022-2028 'To support the conservation and enhancement of Natura 2000 Sites, and to protect the Natura 2000 network from any plans and projects that are likely to have a significant effect on the coherence or integrity of a Natura 2000 Site, in accordance with relevant EU Environmental Directives and applicable National Legislation, Policies, Plans and Guidelines. Furthermore, it is the policy of the Council to 'only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the site concerned, unless the plan or project is subject to the provisions of Article 6(4) of the Habitats Directive' "Ref: Policy NS P2). Based on the information submitted with the application the Planning Authority is not satisfied that the applicant has demonstrated that the development, would not give rise to ecological impacts and would not significantly affect the Slaney River Valley Special Area of Conservation (SAC Site Code 000781) and its conservation objectives. Accordingly, the development would contravene materially Policy NS P1 and NS P2 of the Carlow County Development Plan*

2022-2028 and would therefore be contrary to the proper planning and sustainable development of the area.

- 3. The application site is located on land that is partly identified within the 1/100 and 1/1000 flood events as per the flood zone mapping contained in the Tullow Local Area Plan 2017-2023. Having regard to the proximity of same, and in the absence of a Site-Specific Flood Risk Assessment Report and Justification Test, the Planning Authority is not satisfied that the development is in accordance with the principles for flood risk management as set out in 'The Planning System and Flood Risk Management Guidelines for Planning Authorities' 2009', with the proposal also being contrary to Section 16.2.5 of the Carlow County Development Plan 2022-2028. Accordingly, the development is in an area which is at risk to flooding and is thus contrary to the proper planning and sustainable development of the area.*
- 4. Notwithstanding, the proposal to provide a render finish to external walls of the existing log cabin style dwelling house to be retained, the development which includes for a log cabin type dwelling fails to satisfactorily integrate and harmonise with existing house types in the area and would be contrary to urban design principles as set out in Section 12.8 of the Carlow County Development Plan 2022-2028 which encourages consistency in materials, colour, proportions, roof pitches, building detail, etc within a development. The development for retention represents a type of development that is out of character with the established built form in the area and adversely impacts on the visual amenities of the area. Accordingly, the development, if permitted, would set an undesirable precedent for development of the kind and thus be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report, in summary, states the following:

- The overall principle of development at this location is not acceptable and the dwelling represents a material contravention of the LAP.

- The site is zoned 'Amenity and Open Space' and 'Residential Infill' in the Tullow LAP 2017-2023 and the house is in close proximity to the Slaney River Valley SAC. A dwelling is not permitted on land zoned 'Amenity and Open Space'.
- The only difference between the current proposal and the previous refusal for retention of the dwelling, Ref. 2223, is the proposal to render the walls of the log cabin. Even with rendering the design of the dwelling is at variance with the established house style in the area.
- The applicant has not demonstrated that safe sightlines exist for the vehicular access onto the R418.
- The site lies partially with the 1/100 and 1/1,000 year flood events but there is no Site Specific Flood Risk Assessment with the application. In addition, no justification test was submitted by the applicant.
- Given the proximity of the Slaney River Valley SAC an AA Screening should have been carried out but no such screening was included in the application documentation. The planning authority therefore cannot determine the level of potential impact on the SAC that may be attached to the dwelling for which retention is sought.
- The Planner's Reports note that EIA is not required in respect of the development for which retention is sought.

3.2.2. Other Technical Reports

- The Environment Section recommended a refusal of permission regardless of any water or sewer connections as the house is located in an area zoned 'Amenity and Open Space'..
- The Municipal District Engineer required a demonstration of achievable sightlines, details on surface water drainage from the road onto the site and information on water and sewage connections.

3.2.3. Prescribed Bodies

- TII had no observations to make on this case.

3.2.4. Observations

- The Planner's Report on file states that one submission was made in relation to this application but does not specify the content of said submission.

4.0 Planning History

4.1. On the Appeal Site

- Ref. 22231 – permission refused in August 2022 for the retention of the log cabin (no rendering proposed) for the same four reasons as the current retention application/application was refused.
- UD21/34 – Enforcement Notice issued on 14th June 2021 to remove the log cabin at the appeal site.

4.2. In the Vicinity of the Site

- No planning history for similar developments in the vicinity of the appeal site.

5.0 Policy and Context

5.1. Development Plan

Tullow LAP 2017-2023 is the statutory plan for the area within which the appeal site is situated.

The site is located within two zoning objectives 'Amenity and Open Space' and 'Existing Residential/ Infill'. However, it should be noted by the Board that, the majority of the site, and certainly the dwelling, fall within the 'Residential Infill' zoning objective. It is unclear due to the resolution on the online zoning map whether or not the eastern tip of the appeal site falls within the 'Amenity and Open Space' zoning objective but it presumably does given the planning authority refusal reason No. 1 which is based on the dwelling being contrary to the 'Amenity and Open Space' zoning objective on the site.

Zoning Objective B – Existing Residential/Infill - To protect and improve existing residential amenity; to provide for appropriate infill residential development; to provide for new and improved ancillary services. This zoning principally covers existing residential areas. The zoning provides for infill development within these

existing residential areas. The primary aims of this zoning objective are to preserve and improve residential amenity and to provide for further infill residential development at a density that is considered suitable to the area and to the needs of the population. Such areas, particularly where bordering the commercial centre, will be protected from the pressure of development of higher order uses such as retail and offices.

Flood Risk Requirements

- Future applications for re-development on any residential sites on or adjacent to Flood Zone A/B will require an FRA at development management stage - in accordance with the requirements stated under Section 5 of this SFRA.
- The two minor watercourses flowing into the Slaney are the Mount Wolseley and Tullowphelim Streams. The watercourses have been modelled under the CFRAM and do not indicate any significant risk to adjacent lands. Existing residential zoning adjacent to the Mount Wolseley and Tullowphelim Streams shall maintain a green corridor adjacent to the channel to facilitate maintenance/wayleave and maintain open space. The width of this margin can be discussed and agreed with Carlow County Council. A suitably detailed FRA shall be provided for any development adjacent to the streams or near to a culvert crossing. The FRA can manage site design at development management stage but the residual risk of culvert blockage will need to be specifically investigated in all cases and it must be determined the site design can manage the potential residual risk. Refer to Section 5 of the SFRA.

Within this B zoning objective a dwelling is deemed to be a use that is 'Permitted in Principle'.

Objective F- Amenity & Open Space -To protect and provide for recreation, open space and amenity provision. The areas included in this zoning objective cover both private and public open space and are dispersed throughout the town. The aims of this land use-zoning objective include; to protect, improve and provide for recreation, open space and amenity provision; to protect, improve and maintain public open space; to preserve private open space and to provide recreational and community facilities. The Council will not normally permit development that would result in a loss of open space within the town except where compensatory open scape is provided

to service the community affected in an appropriate location. Existing agricultural uses in open space areas will continue to be permitted, and reasonable development proposals in relation to this use will be considered on their merits.

Within this F zoning objective a dwelling is deemed to be a use that is 'Not Permitted'.

Chapter 5 of the LAP covers 'Housing and Sustainable Neighbourhoods'.

HP 3: To facilitate where appropriate residential development on appropriate infill / regeneration and town centre sites in accordance with the principles of proper planning and sustainable development.

Chapters 3 and 16 of the Carlow County Development Plan 2022-2028 contain policies and objectives in relation to housing development and development standards respectively.

5.2. **Natural Heritage Designations**

- Slaney River Valley SAC.

5.3. **EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ 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. The grounds of the First Party appeal are, in summary, as follows:

- The applicant suffers from ill health and built the log cabin to prevent himself becoming homeless.
- A temporary permission of five years would allow the applicant time to find alternative accommodation.

- The appeal site has been in family ownership for a long time and has not flooded in the last 100 years.

6.2. Applicant Response

Not applicable.

6.3. Planning Authority

The Planning Authority response states that all issues raised by the appellant were addressed in the Planner's Report on file.

6.4. Observations

None received.

6.5. Further Responses

Not applicable.

7.0 **Assessment**

Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.

The main issues, therefore, are as follows:

- Principle of development
- Flood risk.
- Traffic hazard.
- Dwelling design.
- AA Screening.

7.1. Principle of Development

7.1.1. The majority of the site, from the online mapping in the LAP, appears to be zoned 'Existing Residential/ Infill' with the balance in the eastern tip of the site zoned 'Amenity and Open Space'. The first reason for refusal stated by the planning

authority is that the development would be at variance with the 'Amenity and Open Space' zoning objective for the site.

7.1.2. However, the majority of the site, and certainly the area where the house has been constructed, is located in the area zoned 'Existing Residential/ Infill' where a dwelling is deemed 'Permitted in Principle' in the Tullow LAP 2017-2023. Accordingly, I do not believe that the Board should refuse permission on the basis that the development contravenes a zoning objective in the LAP.

7.1.3. I conclude therefore that the development does not contravene the zoning objective covering the majority of the site and zoning contravention is not therefore a valid reason for refusal in this instance.

7.2. Flood Risk

7.2.1. The absence of a Site Specific Flood Risk Assessment and a justification test is a significant flaw in the application documentation as it is a specific requirement for development in areas with a Zoning Objective B – Existing Residential/Infill, into which zoning the majority of the appeal site falls within.

7.2.2. Appendix 3 of the Tullow LAP 2017-2023 contains a Strategic Flood Risk Assessment (SFRA) and the appeal site in Figure 4.1 of the SFRA is located in close proximity, though not within, Flood Zone A - high probability of flooding. This zone defines areas with the highest risk of flooding from rivers (i.e. more than 1% probability or more than 1 in 100)).

7.2.3. In the absence of a Site Specific FRA and justification test I am of the opinion that the Board should adopt a precautionary approach and refuse permission on the basis of flood risk potential at the appeal site.

7.3. Traffic Hazard

7.3.1. The issue of sightlines at the entrance to the lane to the R418 of the appeal site is indeed an item of information that should have been included with the application documentation. However, I can confirm to the Board that on my site visit I found that the sightlines in either direction from the entrance to the appeal site were perfectly adequate.

7.3.2. I conclude therefore that the issue of traffic hazard is not the basis for a reason for refusal in this instance.

7.4. Dwelling Design

7.4.1. Given the location of the appellant's property in relation to neighbouring properties, and to the design of these neighbouring properties, it is clear that the log cabin structure is not in conformity with the design norm applied to neighbouring structures. This is not a question of individual taste but rather one of the log cabin being incongruous in its architectural context leading to a visual dissonance along Thomas Traynor Road. The precedent were permission for retention to be granted for the cabin would be unfortunate.

7.4.2. I note that it is proposed to affix boards to the log cabin walls and render over the boards in an attempt to blend the cabin into its context. However, the orientation, shape, massing and roof profile of the cabin is such that even if it rendered, it would still be an incongruous element amongst the houses along Castledermot Road.

7.4.3. I conclude therefore that the reason for refusal based on the design of the log cabin which the planning authority issued is both reasonable and valid and I recommend this reason for refusal to the Board.

7.5. AA Screening

7.5.1. Having regard to the fact that the applicant did not include an AA Screening as part of the application documentation, it is not known if the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site. The Slaney River Valley SAC is located in very close proximity to the appeal site, <10m, and in the absence of any AA screening as to the potential significant impacts on the SAC associated with the development under appeal, the Board cannot grant permission in this instance.

7.5.2. Accordingly, I recommend to the Board that the absence of the information that an AA Screening would provide is the basis of a reason for refusal.

7.6. Summary of Assessment

7.6.1. Having regard to the above, I recommend to the Board that the retention permission/permission for the development be refused on flood risk, appropriate assessment and design grounds but not be refused on the basis of the development being in contravention of the zoning objective for the site.

7.6.2. I have also considered the request for a temporary permission by the appellant but having regard to the Enforcement Notice (UD21/34) issued on 14th June 2021, and to the previous refusal for the retention of the log cabin in August 2022 (Ref. 22231), I consider that sufficient time, in excess of two years, has already elapsed within which alternative accommodation could have been sourced by the appellant and I do not recommend a temporary permission is granted by the Board in this case.

8.0 Recommendation

I recommend that planning permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The development is in an area which is at risk of flooding. The Board is not satisfied, on the basis of the information lodged with the planning application, that the development would not give rise to a heightened risk of flooding either on the proposed development site itself, or on other lands. The development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.
2. The site of the proposed development lies in close proximity to the Slaney River Valley Special Area of Conservation, a site of European importance. Having regard to the absence of information in the application, the Board is not satisfied that on site works would not have significant adverse effects on both the natural heritage of the area and the European designated site. It is considered that the development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Having regard to its location at the edge of the town, it is considered that the development is out of character with the established pattern of development in the area and would result in the unsatisfactory juxtaposition of different house types. The development thereby constitutes a substandard form of development which would seriously injure the amenities of the area and be contrary to the proper planning and sustainable development of the area.

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.

Bernard Dee
Planning Inspector

15th August 2023