



An
Bord
Pleanála

Inspector's Report ABP 317718-23

Development

Change of use of site/structure from commercial to residential, retention of alterations carried out to pre-existing structure, permission for further alterations to structures on site to provide for two front-facing, flat roofed dormer windows, two front facing roof lights, three rear facing roof lights, raised site boundaries with adjoining detached bungalow and the omission of the existing (recently installed) north-east facing first floor gable window, permission to decommission the existing septic tank and provide a replacement EPA compliant waste water treatment system.

Location

Kilcommonmore North, Cahir, Co. Tipperary.

Planning Authority

Tipperary County Council.

Planning Authority Reg. Ref.

23135.

Applicant(s)

Andrei Ungurean.

Type of Application Permission and retention.

Planning Authority Decision Refuse.

Type of Appeal First Party

Appellant(s) Andrei Ungurean.

Observer(s) None on file.

Date of Site Inspection 28th November 2023.

Inspector Des Johnson.

1.0 Site Location and Description

- 1.1. The site is located approximately 2.2kms to the south-west of Cahir in the rural townland of Kilcommonmore North.
- 1.2. The site was previously used as a milk depot. At the time of inspection there was a partly converted single storey building, with accommodation at roof level, sited to the rear (south-eastern boundary) of the site. This building is occupied. To the front of this, the site is substantially concreted. A large polytunnel is sited parallel to the south-western site boundary, and a children's playhouse is close to the north-eastern boundary. Piles of wood are stored at various locations close to the site boundaries. There is a single storey dwelling adjoining to the north-east. A first-floor window in the partly converted building on the appeal site overlooks the rear of the adjoining dwelling. There is a wide access on to the public road (L-3302), which has a carriageway of approximately 4.8m. Sightlines to the south-west are partly restricted by the sites front boundary wall, but are good to the north-east.
- 1.3. The appeal site inclines away from the public road. This area is mostly rural and agricultural in character.

2.0 Proposed Development

- 2.1. The proposed development consists of the following:
 - (a) Change of use from commercial to residential
 - (b) Retention of alterations carried out to the pre-existing structure to convert to a detached dwelling
 - (c) Two front-facing, flat-roofed dormer windows, two front-facing rooflights, three rear-facing rooflights, and raised boundaries with adjoining detached bungalow
 - (d) Omission of existing, recently installed north-east facing front gable window
 - (e) Decommission existing septic tank and provide replacement EPA compliant WWTS.
- 2.2. The gross floor area of the existing building is stated to be 104 sqm, and the site area is stated to be 0.12ha.

- 2.3. The applicant is a driver of recovery vehicles and covers the whole country. He is in permanent employment and is a naturalised Irish citizen since 2015. He has a family of six young children, with the older ones attending pre-school locally.
- 2.4. The site is located on a regionally important karstified (diffuse) aquifer with high vulnerability. A Site Characterisation Form records that there is nothing on site to suggest poor soakage and the adjoining land is good agricultural land in grazing. The water table is at 2.3m but there is evidence of mottling at 1.8 – 1.9m bgl. Soakage is good and well within the required range. A secondary treatment system and soil polishing filter are proposed.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for 2 reasons. The reasons relate to the following:

1. The site is in an Area Under Urban Influence. Policy 5-11 states that single houses will be considered for persons where an Economic or Social Need is demonstrated in accordance with specified criteria. An Economic or Social Need has not been demonstrated, and the proposed development would conflict with a stated policy of the 2022 Development Plan.
2. Section 5.2.2 of the Development Plan relates to Rural Housing policy. Required sightline standards have not been demonstrated as achievable as set out in Section 6.1 (Road Design and Visibility at a Direct Access) of the 2022 Development Plan. The Planning Authority is not satisfied that the proposal would not endanger public safety by reason of a traffic hazard or obstruction to road users.

3.2. Planning Authority Reports

3.2.1. Planning Reports

There was a former milk depot on the site and works were undertaken to convert this to a residential unit. A 40 foot container is stored to the front of the site. The site is c. 2.2 kms south west of Cahir town in an Area Under Urban Influence. Outline

permission was previously granted for a dwelling on site in 1989 (P312302) but it appears that an office and refrigerated store were constructed instead for which retention permission was granted. The cessation of use date as a milk depot is not known but it appears that it was no longer operational in 2009. The site was acquired by the applicant in June 2022. Policy 5-16 of the Development Plan supports and encourages the refurbishment, conversion and adaptation of specified types of buildings as an alternative to new build. The appeal structure differs materially from the original and, as such, this policy does not apply. The proposal should be assessed as a new dwelling. The applicant has not demonstrated a social or economic need to live in this rural location. The 90m sightlines at the entrance do not meet requirements. The proposed wastewater treatment unit can be accommodated on site. In the event of permission, development contributions will be applied.

3.2.2. Other Technical Reports

District Engineers Report raises no objection.

4.0 Planning History

P3.12302 – Outline permission granted for construction of new dwelling on the subject site.

P3.15769- retention granted for offices, refrigerated store, entrance and sign at the subject site.

TUD-22-154 – Warning Letter dated 25th January 2023 relating to the alteration and extension of existing on-site structures to provide a residential unit, together with demolition of commercial buildings, and the placement of a shipping container on the subject site.

TUD-22-154 – Enforcement Notice dated 2nd June 2023 relating to development on the subject site. This Notice requires the discontinuing of the residential use, removal of the roof, first-floor accommodation, side extension, windows and door of the former structure, removal of the shipping container, removal of the steel framed structure to the front of the site, and the disposal of waste arising.

P39194 – outline permission granted for dwelling on adjoining lands

P39294 – permission granted for dwelling on adjoining lands.

5.0 Policy and Context

5.1. Development Plan

The Tipperary County Development Plan 2022-2028 applies.

The site is in an Area under Urban Influence.

Relevant policies in relation to this appeal include:

Policy 5-11: Relates to facilitating proposals for dwellings in the countryside outside settlements. Categories of Need are detailed.

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 15-2: Relates to WWTS.

5.2. Natural Heritage Designations

Lower River Suir SAC (002137) at a separation distance of 1.2kms.

Galtee Mountains SAC (000646) at a separation distance of 6.7kms.

5.3. EIA Screening

5.4. Having regard to the nature and modest scale of the proposed development, and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal may be summarised as follows:

1. The commercial use of the site as a milk depot for 15 years (1990-2005) involved the parking and movement of heavy trucks, vans, and cars. This is not an

application for a new house in the countryside, rather the re-purposing of existing rural building stock. Traffic movements serving the previously approved commercial use of the site would have been significantly greater compared with the traffic which could be expected in the current proposal. This would represent a significant improvement in terms of traffic safety. The proposed development would represent significant planning gain aesthetically and in terms of traffic safety.

2. The applicant is a naturalised Irish citizen, having moved to Ireland and lived in Cahir since 2007. His landlord decided to sell in 2022 and the applicant had no option but to purchase the subject site as he could not afford to purchase a house. He has six children under 8 years of age, all of whom were born in Tipperary and attended school and pre-school in Cahir.
3. There is an economic and social need in this case. The proposal would entail 'domesticating' the entire site thereby enhancing the rural environment. The site is serviced, and the proposed new WWTS would be a considerable improvement on the existing septic tank.
4. Tipperary County Council previously granted outline permission for a dwelling on this site.

6.2. Planning Authority Response

Policy 5-16 of the Tipperary County Development Plan allows for the conversion and adaptation of existing building stock in rural areas. The existing structure on site was substantially modified and extended and the Planning Authority considers that the works undertaken were beyond the scope of Policy 5-16 of the Plan. The site is in an Area Under Urban Influence as defined in the Plan. The housing need in this case is urban based. The provisions of Policy 5-11 apply. The applicant is not rural based and does not have a social or economic need to reside at this location. The applicant was clearly advised at pre-application consultation stage of the Planning Authority's concerns. The appellant commenced works on the site and enforcement proceedings commenced.

6.3. **Observations**

None on file.

6.4. **Further Responses**

None on file.

7.0 **Assessment**

7.1. There are several elements to the proposed development on a site stated to be 0.12ha, summarised as follows:

- (a) Change of use from commercial to residential
- (b) Retention of alterations carried out to the pre-existing structure to convert to a detached dwelling
- (c) Two front-facing, flat-roofed dormer windows, two front-facing rooflights, three rear-facing rooflights, and raised boundaries with adjoining detached bungalow
- (d) Omission of existing, recently installed north-east facing front gable window
- (e) Decommission existing septic tank and provide replacement EPA compliant WWTS.

7.2. The Planning Authority refused permission for two reasons. The first reason relates to the categorisation of this area as an Area Under Urban Influence where housing need criteria applies, and the second reason relates to endangerment of public safety by reason of traffic hazard and obstruction of road users.

7.3. Works have already been carried out at the appeal premises, and these have been the subject to an Enforcement Notice. I submit that the alterations carried out should be assessed on their own merits, with no specific significance given to the fact that the alterations have already been carried out.

7.4. The key issues to be addressed in this appeal are as follows:

- Principle of change of use

- Development Plan policy
- Residential amenities
- Wastewater treatment
- Assess
- Appropriate Assessment

7.5. Principle of change of use.

This is an area with a predominantly rural, agricultural character, with scattered one-off housing. The site fronts on to a local road (L-3302), and there are two detached bungalows adjoining and adjacent to the north-eastern boundary of the subject site. The appeal site was previously the subject of an outline permission for a house granted in 1989, but was subsequently developed as a milk depot and used as such between 1990-2005. Retention permission was granted for offices, refrigerated store, entrance and sign. Having regard to this background, it can be concluded that the site has a commercial use, but has not been used for commercial purposes for a considerable period. It adjoins lands in residential use and agricultural use.

On this issue I conclude that there is no convincing planning reason not to permit a change of use of the appeal site from commercial to residential.

7.6. Development Plan policy

The Planning Authority contends that the site is in an Area Under Urban Influence in the current Tipperary County Development Plan 2022-2028, and that housing need criteria as detailed in Policy 5-11 should be applied. Based on the information submitted the Authority concludes that there is no social or economic need demonstrated in this case and, as such, the proposed development would conflict with the provisions of the Plan.

The appellants contend that this is not an application for a new house, rather the repurposing of existing rural building stock. Policy 5-16 of the Development Plan supports and encourages the appropriate refurbishment, conversion, and adaptation of existing rural building stock, such as vernacular school houses, coach houses, and farm buildings. The Planning Authority is of the view that the extent of works

carried out and proposed result in a material alteration of the original structure, with very little of the original remaining and, as such, Policy 5-16 does not apply.

There is no information on file to indicate that there is any demand for the continued use of this site for commercial purposes and I have concluded that there is no good planning reason not to permit a change of use from commercial to residential use. I submit that the buildings on the site, which were used as a milk depot, formed part of the existing rural building stock; this is not disputed by the Planning Authority. Clearly the proposal under appeal would result in significant changes to the original structure on the site. The Planning Authority concluded that these were material changes rendering Policy 5-16 as non-applicable. The appellants claim that there is an economic and social need and the proposal on a serviced site would enhance the rural environment.

I note that there is no information on file to indicate that the milk depot building was of any architectural merit or cultural importance. On balance, I conclude that the proposal does involve the adaptation of existing rural building stock on a serviced site, and that the conversion of the building and the site to residential use would not conflict with the provisions of the Tipperary County Development Plan 2022-2028, and would be in the interests of proper planning and sustainable development.

7.7. Residential amenities

The elements for which retention is sought, include conversion of the building to a detached dwelling, the provision of accommodation in a raised roof space, provision of first floor windows and ground floor window and door in the south-western elevation, door and windows at ground floor level in the north-western elevation, and provision of window at ground floor level in the south-eastern elevation. There is an existing first floor window in the north-eastern elevation overlooking the rear of the adjoining dwelling, and it is proposed to omit this window. Permission is sought for two front facing, flat roofed dormer windows, two front facing rooflights, three rear-facing rooflights and raised boundaries with the adjoining bungalow.

Subject to the removal of the first-floor window in the north-eastern elevation, I submit that the alterations proposed and for retention are acceptable, would not be injurious to the residential amenities of adjoining property and, as such, are acceptable.

Note: The elevation drawings submitted with the application appear to be incorrectly notated. For instance, the 'Southern' elevation should be titled the North-Western elevation, The 'Eastern' elevation should be titled South-Western elevation, the 'Western' elevation should be titled North-Eastern elevation.

7.8. Wastewater treatment

It is proposed to decommission the existing septic tank and provide a replacement EPA compliant WWTS. A Site Suitability Assessment (SSA) was submitted with the application. The site is located on a regionally important karstified aquifer with High Vulnerability. The SSA states that the site is suitable for development and a Secondary Treatment System and Soil Polishing Filter are proposed. The Planning Authority, while noting shortcomings in the SSA, conclude that an on-site wastewater treatment unit can be accommodated on site. Based on the information contained on the file, I conclude that the proposals for wastewater treatment are acceptable.

7.9. Access

There is an existing recessed access on to the site. This is set back 3m from the adjoining carriageway and is 7.3m wide. There are steel gates at the entrance and splays 11.7m wide at the site frontage.

Sightlines to the south-west are partly restricted by the sites front boundary wall but are good to the north-east. The Planning Authority raises no objection to the proposal.

The appellants contend that traffic movements serving the previously approved commercial use of the site would have been significantly greater compared with the traffic which could be expected serving the proposed development. I agree with this contention. I also note that the Planning Authority previously granted outline permission for a dwelling on this site. In these circumstances, I submit that the proposed access arrangements are acceptable and would not endanger public safety by reason of traffic hazard or obstruction to road users.

7.10. Appropriate Assessment Screening

The site is approximately 1.2 kms separated from the Lower River Suir SAC (002137). The qualifying interests for this SAC are Freshwater Pearl Mussel, White Clawed Crayfish, Sea Lamprey, Brook Lamprey, River Lamprey, Twaite Shad,

Salmon, Atlantic Salt Meadows, Otter, Mediterranean Saly Meadows, Water courses of plain to montane levels, Hydrophilous Tall Herb Fringe Communities of Plains and of the Montane to Alpine Levels, Old Sessile Woods, Alluvial Forests, and Taxus Baccata Woods. The Conservation Objectives are to maintain or restore favourable conservation condition of the qualifying interests.

The site is approximately 6.7 kms separated from the Galtee Mountains SAC (000646). The qualifying interests for this SAC are Northern Atlantic Wet Heaths, European Dry Heaths, Alpine and Boreal Heaths, Species Rich Nardus Grasslands on Siliceous Substrates in Mountain Areas, Blanket Bogs, Siliceous Scree, Calcareous Rocky Slopes, and Siliceous Rocky Slopes with Chasmophytic Vegetation. The Conservation Objectives are to maintain or restore favourable conservation condition of the qualifying interests

The proposed development is not directly connected with or necessary to the management of either of these European designated sites or any other European designated sites. There is no information to indicate that any of the qualifying interests for the Lower Suir SAC or Galtee Mountains SAC are found on the subject appeal site. The Raheen Stream (a tributary of the Suir) is recorded as approximately 300m to the north of the appeal site. There are no ditches bordering the site. Having regard to the nature and scale of the proposal, and to the absence of any pathway to the Lower River Suir SAC or Galtee Mountains SAC, and to the qualifying interests and conservation objectives for the two designated sites, it can be concluded that the proposed development, itself or in combination with other plans or projects, would not be likely to have any significant effect on the Lower River Suir SAC or Galtee Mountains SAC.

8.0 Recommendation

8.1. I recommend that planning permission be granted.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposal, the existing commercial use of the site and its former permitted use as a milk depot, it is considered that the proposed development would constitute the acceptable conversion and adaptation of

existing rural building stock in accordance with Policy 5-16 of the Tipperary County Development Plan 2022-2028, and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
2.	<p>Within 1 month of the date of this permission, the applicant shall submit copies of the elevational drawings with corrected notation to the Planning Authority for placement of the planning file.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>The external finishes of the proposed extension shall be as outlined on the plans and particulars accompanying the application.</p> <p>Reason: In the interest of visual amenity.</p>

4.	<p>Within 3 months of the date of this permission, the first-floor window in the north-eastern elevation shall be blocked up to the written satisfaction of the Planning Authority.</p> <p>Reason: In the interest of residential amenity.</p>
5.	<p>This permission relates to development for retention and proposed as described in the public notice, and shall not be interpreted as permitting any other development on the site.</p> <p>Reason: In the interest of clarity.</p>
6.	<p>All surface water run-off from roofs, entrances and parking areas within the site shall be collected and disposed of within the site to the proposed surface water drainage system. No surface waters shall discharge onto adjoining properties or the public road.</p> <p>Reason: In the interest of public health and to prevent flooding in the interest of traffic safety and amenity.</p>
7.	<p>The dwelling hereby permitted shall be used solely as a single dwelling unit and shall not be subdivided in any way through sale, letting or by any other means.</p> <p>Reason: In the interests of residential amenity and the proper planning and sustainable development of the area.</p>
8.	<p>The wastewater treatment system and percolation area shall be installed in accordance with the requirements of the Code of Practice, Wastewater Treatment Systems Serving Single Houses (p.e. < 10) EPA 2021 and shall be maintained in accordance with the manufacturer's instructions.</p> <p>Reason: In the interest of public health.</p>

. Des Johnson
 Planning Inspector

7th December 2023

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.

Note: I draw the Board's attention to the erroneous notation of the elevation drawings submitted to the Planning Authority. Taken in conjunction with the Planning Pack Map and Existing Site Layout Plan submitted with the application, the erroneous notation of the elevation drawings can be readily identified. In such circumstances I consider that no member of the public would have been misled by the drawings submitted. I consider that this is a technical matter which would not merit refusal. I have included a recommended condition addressing the matter.