



An
Bord
Pleanála

Inspector's Report

ABP-317727-23

Development	Extensions to rear and side of dwelling and raising of roof over north-east of dwelling.
Location	Kilnacarriga , Newcastle , Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	22673
Applicant(s)	Daffodil Care Services Ltd.
Type of Application	Retention Permission
Planning Authority Decision	Grant Retention Permission
Type of Appeal	Third Party
Appellant(s)	Nigel Burke and Emilie Sjoberg
Observer(s)	None on file
Date of Site Inspection	22 nd September 2023
Inspector	Sarah Moran

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1.0 Site Location and Description

1.1. The site is an existing one off house at a rural location on the southern side of the L3501, c. 1.9 km to the west of the village of Newcastle, Co. Tipperary, total stated site area 0.22ha. The house is single storey with accommodation at roof level lit by velux windows, situated in a large garden. It has several extensions to the side/rear, including one extension that has a room at first floor level. The building does not appear to be occupied at present. There is a large shed at the southwestern corner of the site. The site has two entrances to the public road and is served by the public water supply and a septic tank wastewater treatment system. There are existing one-off houses to the immediate east and west of the site.

2.0 Proposed Development

2.1. Permission is sought to retain the following works:

- Two no. extensions to the rear/side of dwelling
- Raising the roof level over the northeast of the dwelling and for the provision of first floor accommodation
- Change of fenestration
- Internal modifications
- All associated site works and services

2.2. The applicant submitted further information to the planning authority on 18th May 2023, comprising:

- New proposal to decommission the existing septic tank and to install a new wastewater treatment system (WWTS), along with a Site Characterisation Form and Site Suitability Assessment
- Revised proposal to seek retention for the existing shed at the site
- Revised site layout plan indicating new drains/ soakpits at both site entrances

2.3. Revised site notices were submitted to the planning authority on 24th May 2023 and on 16th June 2023.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Tipperary County Council (TCC) sought further information on 7th February in relation to the following issues:

- Information regarding wastewater treatment including the type of system in place, capacity and maintenance, also details of a new system if necessary and Site Suitability Assessment;
- Applicant required to regularise unauthorised garage at the site;
- Revised layout to indicate drainage/ soakaway system at site entrance.

3.1.2. TCC issued a notification of a decision to grant permission on 13th July 2023, subject to six no. conditions. None of the conditions imposed involved any significant changes to the development to be retained.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Report of Executive Planner, 3rd February 2023, recommends a request for further information (RFI) in relation to wastewater treatment, surface water management and the planning status of the garage at the site.
- Second planning report on foot of further information submission, 18th May 2023, states that the revised proposal contains significant additional data and requires new newspaper and site notices in accordance with article 35(1) of the Planning and Development Regulations 2001 (as amended).
- Third planning report on file, 12TH June 2023, notes that the revised site notice was not in place at site inspection, applicant is required to erect a new site notice.
- Fourth planning report on file, 3rd July 2023, recommends permission subject to conditions.
- Habitats Directive AA Screening Report, 3rd February 2023. Further information is necessary to complete screening. Second Screening Report, 3rd July 2023, on

foot of the further information submitted, concludes that there is no likelihood of significant effects on a European Site and that the development can be screened out for AA.

3.2.2. Other Technical Reports

- Report of TCC Executive Engineer, 4th February 2023, no objection subject to conditions.
- Second report of Executive Engineer, 27th June 2023, no objection subject to conditions.

3.3. **Prescribed Bodies**

3.3.1. No submissions on file.

3.4. **Third Party Observations**

3.4.1. There is one submission on file from the above named appellants, which objects to the development on grounds similar to those raised in the grounds of appeal.

4.0 **Planning History**

4.1. There is no recent planning history on file relating to the subject site. Permission was granted under reg. ref. 02/902 for an extension to the western side and the south-eastern side of the house, a storage shed, new septic tank and percolation area and modification to existing entrances. See planning report on file dated 3rd February 2023 for details of permitted development. The extension was not constructed in accordance with the permitted plans, or was subsequently modified.

5.0 **Policy Context**

5.1. **Tipperary County Development Plan 2022-2028**

5.1.1. The site is in an unzoned rural area outside of any designated settlement.

5.1.2. Development plan Volume 3 Appendix 3 Landscape Character Assessment and Schedule of Views and Routes, section 6.1 Objectives and Guidelines. Landscape

Character Area 4 River Suir Central Plain / Nenagh Corridor Class 1 Scenic Area, “facilitate development that continues established patterns of use and settlement”.

5.1.3. Development plan Volume 3 Appendix 6 Development Management Standards, section 4.3.2 Extensions to Dwellings:

In cases where living accommodation is to be substantially upgraded and/or extended to accommodate additional occupants, the applicant will be required to demonstrate that the wastewater treatment system is adequate and does not present a risk to human health or the environment. The applicant will be expected to demonstrate to the Council that the wastewater treatment system is fit for purpose, operating and maintained appropriately and is not causing damage.

Also section 4.12 Domestic Extensions:

The Council will seek to implement the following guidelines in respect of extensions.

- a) A ground level extension shall be subordinate to the main dwelling in scale and design. There are, however, circumstances where an existing property is limited in size (e.g. a single bedroom cottage) and a large extension is required to allow it to be brought up to modern living standards. Such developments will be considered on a case-by-case basis and will require a sensitive design to ensure that the proposal will not dominate the local streetscape and a plot size that can absorb the development.*
- b) The extension shall integrate with the primary dwelling, following window proportions, detailing and finishes, including texture, materials and colour.*
- c) The design and layout of extensions to houses shall have regard to the amenities of adjoining properties. The Council may require the submission of a daylight, sunlight and overshadowing assessment, if considered necessary.*
- d) Where a dwelling is served by an on-site wastewater treatment system and where the extension increases the potential occupancy of the dwelling, the applicant shall demonstrate that the system complies with the standards of the EPA Code of Practice for Domestic Wastewater Treatment Systems (EPA, 2021), (or any amendment thereof).*

5.2. Natural Heritage Designations

- 5.2.1. The site adjoins the Lower River Suir SAC (site code 002137). The River Tar, which forms part of the SAC, is located 35m north of the site. However, having regard to the nature and scale of the development to be retained, being extensions to an existing house, and the presence of the L-3501 road between the site and the SAC, as well as the separation distances to other European Sites, I do not consider that the proposal would be likely to significantly impact the qualifying interests of European Sites during either the construction or operational phases of development. As such, I consider that no Appropriate Assessment issues arise. In conclusion, I do not consider 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. The TCC Habitats Directive AA Screening Reports on file, dated 3rd February 2023 and 3rd July 2023, are also noted in this regard.

5.3. EIA Screening

- 5.3.1. Having regard to the nature of the development, comprising of extensions to an existing one-off house, 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 Third Party Appeal

- 6.1.1. The main points made in the grounds of appeal may be summarised as follows:
- The appellants are in close proximity to the development to be retained.
 - The property has been extended and modified on several occasions in a haphazard manner since the grant of permission. It has increased from three to eight bedrooms. The appellants are concerned about the scale of the development and the lack of planning procedures undertaken by the property owner.

- It is submitted that the applicant intends to use the property as a commercial venture and that a full application for a change of use should have been submitted from the outset. There are no local services or amenities to suit such a commercial venture.
- It is unclear if the permitted wastewater treatment system is designed to suit the intended use of eight bedrooms.
- Velux windows which overlook the appellants property have not been indicated on the site plans. The lack of windows for bedrooms on the first floor is contrary to building regulations and should be addressed within planning procedures.

6.2. Applicant Response to Third Party Appeal

6.2.1. The following points are noted from the applicant's response to the appeal:

- The applicants are a children's residential care service who provide accommodation for vulnerable young people with disabilities and have purchased the dwelling to provide a service for young people in the care of the state on behalf of the HSE and Tusla to provide a HIQA registered children's disability care centre.
- It is submitted that the rural location of the subject site is particularly suitable for children with disabilities where the occupants are away from the distractions of urban areas and can be fully supervised and to concentrate on the therapeutic placement process.
- The applicant seeks to retain the physical works to the building and does not seek permission for a change of use. The Board will be aware that a change of use of a dwelling to a care facility does not require planning permission as long as certain criteria are met. The information on the proposed change of use is provided solely for clarity and transparency. It is submitted that the application should be assessed on its merits.
- The applicant has applied for a Section 5 Declaration for a change of use of the dwelling, a copy of which is enclosed. The Section 5 application seeks:

Change of use from a house to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing for such

persons. The maximum number of persons with an intellectual or physical disability or a mental illness living in the subject residence is 4. The number of resident carers living in the subject residence is 2. Class 14 (F) development.

- The Board are referred to a decision by TCC to rule that an exemption cannot be confirmed due to existing unauthorised development at the site, pending the outcome of the subject appeal. The extensions and modifications to the house, outside the scope of the development permitted under reg. ref. 02/902, were undertaken in the early 2000s and are beyond the statute of limitations in terms of any enforcement action.
- It is submitted that the extensions do not have any adverse visual impacts. The site is located at the edge of a Class 1 Scenic Area as designated under the development plan but will not have a material impact on the wider landscape given the modest size, scale and massing of the development. The site is also partially screened in views from the public road by trees/hedgerows. The applicant is open to a condition requiring a landscaping plan to further screen the existing house.
- The applicant has submitted details of the proposed WWTS to the satisfaction of the planning authority, with adequate capacity for an eight bedroom dwelling.
- The applicant has submitted revised drawings indicating the two velux rooflights referred to in the appeal. It is submitted that the appellants' house is 54m from the works to be retained and is screened by dense trees, also that the rooflights are above eye level. The rooflights therefore will not result in overlooking of the appellants' property.
- Independent fire safety consultants have been appointed by the applicant to devise a fire strategy suitable for the intended use of the building and demonstrating full compliance with Part 8 of the Building Regulations.

6.3. Planning Authority Response

6.3.1. None on file.

6.4. Observations

6.4.1. None on file.

6.5. Further Responses

6.5.1. None on file.

7.0 Assessment

7.1. I have read through the file documentation and the relevant provisions of the County Development Plan and have carried out a site inspection. The main issues are those raised in the planning reports on file and in the grounds of appeal. Overall, I am satisfied that no other substantive issues arise. I note in this regard that the development site relates to an existing house, is not located in a flood zone, has an established access to the public road and that the reports on file of the Executive Engineer, dated 4th February and 27th June 2023, state no objection subject to conditions. I consider that the relevant issues can therefore be dealt with under the following headings:

- Scope of Development to be Retained
- Impacts on Visual and Residential Amenities
- Wastewater Treatment

These issues may be considered separately as follows.

7.2. Scope of Development to be Retained

7.2.1. The original application was lodged with Tipperary County Council on 14th December 2022. Further information was submitted on 18th May 2023. The development was described as follows in the original notices lodged with the application and the revised notices submitted to TCC on 19th June 2023:

- a) 2 no. extensions to the rear and side of dwelling,*
- b) Raising the roof level over the north-east of the dwelling and for the provision of first floor accommodation,*
- c) The change of fenestration, and*

d) Internal modifications and all associated site works and services.

The further information submitted to TCC on 18th May 2023 included drawings for the existing garage within the site, also to be retained, as well as a Site Suitability Assessment, details of the proposed new wastewater treatment system (WWTS) and proposed new drains/ soakpits at the site entrances.

7.2.2. The application does not refer to the use of the proposed building/extensions to be retained. The grounds of appeal submit that the property at the site has been extended and modified on several occasions in a haphazard manner without planning permission, also that the applicant intends to use the property as a commercial venture and that a full application for a change of use should have been submitted from the outset.

7.2.3. The applicant's response to the grounds of appeal states that the building to be retained will be used as a HIQA registered children's disability care centre to provide a service for young people in the care of the state on behalf of the HSE and Tusla. It is submitted that the rural location of the subject site is particularly suitable for children with disabilities. The applicant seeks permission to retain the physical works to the building and has separately applied for a section 5 Declaration for a change of use of the dwelling, in accordance with section 5 of the Planning and Development Act 2000 (as amended), on the basis that the change of use from residential to a care centre is exempted development under Schedule 2, Part 1, Class 14 (f) of the Planning and Development Regulations 2001 (as amended):

(f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons

With the following condition/ limitation:

The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.

The section 5 application seeks:

Change of use from a house to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing for such persons. The maximum number of persons with an intellectual or physical disability or a mental

illness living in the subject residence is 4. The number of resident carers living in the subject residence is 2. Class 14 (F) development.

- 7.2.4. The applicant submits that the development to be retained / carried out should be assessed on its merits. This is considered reasonable given that the applicant has separately applied for the section 5 Declaration in relation to the change of use. Any future proposed change of use of the building may be considered under a separate planning application if the applicant is unsuccessful in obtaining a section 5 Declaration. The following assessment therefore relates only to the physical works to be retained / carried out at the site.
- 7.2.5. The third party appeal also comments that the submitted drawings do not include velux windows at roof level, which face the appellants' property to the west of the development site, also that the use of rooflights to light bedrooms is contrary to building regulations and should be addressed within planning procedures. The applicant's response to the appeal includes drawings indicting the windows in question and submits that a fire safety strategy for the building will be prepared to demonstrate compliance with Part 8 of the Building Regulations. The Building Regulations are a separate code and consistency with same is outside the scope of this assessment. Potential impacts on residential amenities are considered below.

7.3. Impacts on Visual and Residential Amenities

- 7.3.1. Having regard to the design and layout of the development to be retained, and to intervening distances to adjacent residential properties, I consider that there is no significant impact on residential amenities by way of overlooking, overshadowing, visual obstruction or other disturbance such as noise or dust. The structures to be retained are mainly to the rear of the house and have limited visibility from the road. The shed is modest in scale. I am satisfied overall that the development to be retained/ carried out does not result in any significant adverse visual impacts within a Class 1 Scenic Area, as per the development plan policies set out above, and does not detract from the character of the area.

7.4. Wastewater Treatment

- 7.4.1. The grounds of appeal comment that it is unclear if the proposed WWTS is designed to suit the intended use of eight bedrooms. The applicant submitted a Site Suitability Assessment and details of the proposed WWTS to the planning authority on foot of a

further information request. The reports on file of the TCC Executive Engineer, dated 4th February and 27th June 2023, state no objection subject to conditions. Permission may be granted subject to a condition requiring that full details of wastewater treatment may be agreed with the planning authority prior to completion and occupation of the development to be retained.

8.0 Recommendation

8.1. Having read the appeal and submissions on file, had due regard to the provisions of the Tipperary County Development Plan 2022-2028, carried out a site visit and all other matters arising. I recommend that permission is granted subject to the conditions set out below.

9.0 Reasons and Considerations

9.1. Having regard to the existing residential development at the site, the nature and scale of the development to be retained / carried out, and the provisions of the Tipperary County Development Plan 2022-2028, it is considered that, subject to compliance with the conditions set out below, the development it is proposed to retain would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would constitute an acceptable form of development at this location. The development it is proposed to retain would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further information submitted to Tipperary County Council on 18 th May 2023, and also the proposal submitted to An Bord Pleanála with the grounds of appeal, 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
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	<p>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>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services and shall be agreed in writing with the planning authority prior to the completion / occupation of the development to be retained.</p> <p>Reason: In the interest of public health.</p>
3.	<p>The developer shall enter into water supply and wastewater connection agreements with Irish Water/ Uisce Éireann, prior to the completion /occupation of the development to be retained.</p> <p>Reason: In the interest of public health.</p>
4.	<p>The shed to be retained shall be ancillary to the main dwelling. It shall not be used for commercial purposes or as a separate dwelling unit.</p> <p>Reason: In the interest of residential amenity.</p>
5.	<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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.</p>

	Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.
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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.

Sarah Moran
Senior Planning Inspector

24th September 2023