



An
Bord
Pleanála

Board Order ABP-315689-23

Planning and Development Acts 2000 to 2022

Planning Authority: Clare County Council

Planning Register Reference Number: 22/1025

Appeal by Noel Gavin of Moorhaun, Fountain, Ennis, County Clare and by Antony Travers of Moorhaun House, Fountain, Ennis, County Clare against the decision made on the 12th day of January, 2023 by Clare County Council to grant subject to conditions a permission to Cillian and Sadhbh Clancy care of Andrew Hersey Planning of 3 Atlantic View, West End, Kilkee, County Clare in accordance with plans and particulars lodged with the said Council.

Proposed Development: Construction of a dwellinghouse and garage, with effluent treatment system, and new entrance from public road, with all associated site works, all at Moarhaun, Kilnamona, County Clare.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

The Board noted and agreed with the Inspector's rationale, in particular as set out in section 7.2.6 and section 7.2.7 of the Inspector's report. Having regard to the location of the site for the proposed development, the provisions in the Clare County Development Plan 2023-2029, including Objective CDP 4.14, together with the nature, scale and design of the proposed development, taking into account the information on file, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the landscape or cultural heritage of the area, would not result in the creation of a traffic hazard or be injurious to public health, and would be an acceptable form of development at this location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 proposed development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act 2000, as amended, to this effect.
- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation. This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The site shall be landscaped, using only indigenous deciduous plants and hedging species in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All existing trees and hedgerow shall be retained except to the extent that its removal is necessary to provide for the site entrance. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

4. (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" - Environmental Protection Agency 2021. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

5. (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.
- (b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

6. The roof colour of the proposed house shall be blue-black, black, dark brown or dark grey. The colour of the ridge tile shall be the same as the colour of the roof.

Reason: In the interest of visual amenity.

7. All public service cables for the proposed development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

8. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard:
 - (a) The developer shall notify the planning authority in writing at least four weeks prior to the commencement of any site operations (including hydrological and geotechnical investigations) relating to the proposed development.
 - (b) The developer shall engage a suitably qualified archaeologist to monitor (licensed under the National Monuments Act) all site clearance works, topsoil stripping, groundworks, and/or the implementation of agreed preservation in-situ measures associated with the development. No groundwork of any type shall take place in the absence of the Archaeologist. The use of appropriate machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary.

- (c) The Archaeologist shall advise on and supervise the installation of an appropriate buffer zone to ensure the Recorded Monument is not impacted by the development works. This shall be a minimum of thirty metres from the outermost extent of the Recorded Monument as indicated in the submitted site layout plan and Fig. 6 of the submitted Archaeological Impact Assessment. No groundworks, landscaping, movement or storage of plant/machinery, storage of materials (including spoils) or other construction activities shall be permitted within the established buffer zone. The buffer zone shall remain in place for the duration of all construction works.
- (d) The archaeological monitoring programme shall be carried out under license from the National Monuments Service of the Department of Housing, Local Government and Heritage and in accordance with an approved method statement.
- (e) Archaeological monitoring shall be informed and supplemented by licensed metal detection survey.
- (f) Should archaeological remains be identified during the course of archaeological monitoring, all works shall cease in the area of archaeological interest pending a decision of the planning authority, following consultation with the National Monuments Service, regarding appropriate mitigation (preservation in-situ/excavation). The developer shall facilitate the archaeologist in recording any remains identified.

- (g) Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer.

- (h) Following the completion of all archaeological work on site and any necessary post-excavation specialist analysis, the planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of the monitoring and any subsequent required archaeological investigative work/excavation required. All resulting and associated archaeological costs shall be borne by the developer.

Reason: In order to conserve the archaeological heritage of the site and to ensure the continued preservation (either in-situ or by record) of places, caves, sites, features or other objects of archaeological interest that may exist.

9. 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.

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.



Mary Cregg

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 26th day of March 2024.