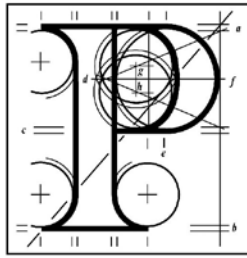


# An Bord Pleanála



## Inspector's Report

**An Bord Pleanála Ref.:** PL03.245645

**Development:** Re-construct and restore existing house, attach new dwelling extension to form split level house, garage waste water system and ancillary site works, Knockroe, Meelick, Co. Clare.

### Planning Application

Planning Authority:	Clare County Council
Planning Authority Reg. Ref.:	15/435
Applicant:	Ann and Guido Kretz
Type of Application:	Permission
Planning Authority Decision:	Grant Permission

### Planning Appeal

Appellant(s):	Michael and Irene Crowe
Type of Appeal:	Third Party
Observers:	None
Date of Site Inspection:	20 <sup>th</sup> of January 2016
Inspector:	Angela Brereton

## **1.0 SITE LOCATION AND DESCRIPTION**

The subject site is located in the townland of Knockroe which is situated about 2.5km to the west of Ballycannon. It is in the rural area to the west of Limerick City. Access to the site is via an existing entrance and gated agricultural laneway off the adjoining narrow L3104. There is a gated entrance also from this laneway to a large shed that appears to be used for timber storage. The access track is through agricultural land and is mainly unsurfaced although there is a hardcore area in that part leading up to the site.

There is an existing derelict ruinous stone structure located on the site. The area in which the site is situated forms a small triangular field area that is bounded by hedgerows. The site is elevated relative to the row of dwellings to the south which front onto the adjoining L3104. Due to the elevated nature of the site it is visible over a wider area. There are two gated agricultural entrances adjoining the site. The site slopes from north to south and the proposed wwt's and percolation area is to be located on the higher northern part of the site. The site appears as backland development to the houses along the county road. Sightlines at the entrance are restricted in a northerly direction due to the bend.

## **2.0 PROPOSED DEVELOPMENT**

It is proposed to reconstruct and restore the existing derelict dwelling, construct and attach new dwelling extension to form a split level dwelling house, garage, waste water treatment system, percolation area, entrance and all associated works.

The application form provides that the area of the site is 0.98ha. The g.f.a of the existing derelict dwelling is 48sq.m and of the proposed new house is 286.44sq.m and of the garage is 45.36sq.m.

A Site Layout Plan, Floor plans, Sections and Elevations have been submitted showing the proposed dwelling house and garage.

Details of the applicant's local need, documentation regarding the landholding and a Site Characterisation Form have been submitted.

It is noted that additional information submitted provided for a change of the house design to single storey and revised plans and Public Notices have been submitted.

## **3.0 PLANNING HISTORY**

The Planner's Report provides a detailed account of the relevant adjoining planning history. The following recent application is relevant to the subject site:

- Reg.Ref.P13/699 – Planning permission was refused to Ann & Guido Kritz for the Construction of a dwellinghouse, attached garage, waste water treatment system, percolation area, entrance and all associated site works for the following reasons:

- 1. Having regard to the site location relative to the adjoining properties to the south and the proposed vehicular access to service same, it is considered that the proposed development would constitute undesirable backland development. It is considered that the proposed development would seriously injure the residential amenity and depreciate the value of property in the vicinity of the site, would set an undesirable precedent for similar types of development and would be contrary to the proper planning and sustainable development of the site.*
- 2. The subject site is located within an area designated as a 'Working Landscape' where the objective as set out in CDP 16.3 of the Clare CDP 2011-2017 to permit development that is directed towards minimising visual impact. It is considered that the proposed development by virtue of the site's location, the scale and design of the proposed dwelling and the elevated nature of the site, would seriously injure the amenities of the area and would therefore be contrary to the proper planning and sustainable development of the area.*

#### **4.0 PLANNING AUTHORITY APPLICATION**

##### **Technical Reports**

The **Roads Planning Report** provides that the applicant should submit drawings showing the sight distance achievable at the proposed entrance.

*Submissions* from local residents include the following concerns:

- Misleading information in the application
- Date of erection of the Site Notice
- Non-fulfilment of the occupancy clause –lack of housing need
- Development would constitute ribbon development
- Poor access to site and restrictive visibility lines
- Wastewater Treatment System

As these are the subsequent Third Party appellants these issues are considered further in the context of the appeal.

Public Representations have been made in support of the application.

The **Planner's Report** has regard to the locational context of the site, planning history and policy and to the submissions made. They note the previous refusal on the site and have serious concerns in relation to the scale, mass and design of the new build, which they do not consider to be acceptable at this location. They also consider that the proposed development constitutes backland development on this elevated site and are concerned that it would have an adverse impact on the amenities of existing dwellings the area and set an undesirable precedent for such development. They consider that Ann Kretz would comply with the relevant settlement policy CDP3.11. They did not consider that the proposed development is appropriate, or that the reasons for the previous refusal (Reg.Ref.P13.699) have been addressed and they recommended refusal.

They considered that an AA for this development is not required.

### Additional Information

Subsequent to this the applicants requested and were given an Extension of Time in accordance with Section 34(9) of the Planning and Development Act 2000 (as amended).

The applicant's agent submitted additional information to include the following:

- A Change of house design
- Revised Site Layout Plan
- Comment on CDP 3.15 and the issue of backland development
- Revised Public Notices

### **Planner's Response**

The Planner had regard to the additional information submitted and noted the change to the house type. They noted that the revised plans provide for a single storey extension to the derelict structure which is proposed to be re-constructed and restored. They refer to Policy CDP 3.15 and do not consider it is relevant in this instance. While they consider the revised design to single storey an improvement they are concerned that the proposal is effectively a new build and the proposal is considered to constitute backland development with the potential to impact on adjoining properties. They recommended that permission be refused having regard to the creation of haphazard backland development, being seriously injurious to the amenities of properties in the vicinity and setting an undesirable precedent for such development being contrary to the proper planning and sustainable development of the area.

However it was subsequently recommended that permission be granted due to the presence of the existing derelict dwelling on the site and the submission of the revised plans.

## **5.0 PLANNING AUTHORITY DECISION**

The Council decided to grant planning permission subject to 11no. conditions for the proposed development (29<sup>th</sup> of September 2015). These include the following:

- Condition no.1 – The dwelling house to be constructed in accordance with the revised plans and particulars submitted.
- Condition no.2 – Occupation condition (7 years).
- Condition no.3 – Finished Floor levels.
- Condition no.4 – External finishes.
- Condition no.5 – Undergrounding of services.
- Condition no.6 – Disposal of surface water
- Condition no.7 – Location, installation and maintenance of the pwmts in accordance with Code of Practice standards.
- Condition no.8 – Development Contributions.
- Condition no.9 – Landscaping of the site.
- Condition no.10 – Proposed garage only to be used for purposes incidental to the main dwellinghouse.
- Condition no.11 – Submission of a method statement for the detailed restoration of the structure on site.

## 6.0 GROUNDS OF APPEAL

A Third Party appeal has been submitted by local residents Michael and Irene Crowe and their grounds of appeal include the following:

- They note the previous refusal (Reg.Ref. P13/699) and are concerned regarding location and backland development and consider that there is an inconsistency with the previous planning decision on the same site.
- They are concerned about the references in the planning file to a 'derelict dwelling' and refer to O.S maps in this regard.
- Conflicting and misleading information has been submitted.
- They are concerned that the site will be developed by Ann's brother, Matthew Broggy as the person who will build and live in this house. Ann Kretz (nee Broggy) and her husband Guido live in Switzerland.
- The site notice did not go up for a week after the suggested date.
- Matthew Broggy does not fulfil the occupancy clause or have a housing need in that he has built and owns a number of houses in the area.
- They provide a history relative to family homes in the area and note a family land holding of 600 acres.
- There are currently 13 houses and unbroken ribbon development along this road.
- The development proposed would further exacerbate this sprawl and would constitute backland development.
- The proposal creates a very negative and undesirable precedent in this locality.
- There is poor access to the site and restricted visibility sight lines. They consider the proposal will give rise to serious traffic hazard and that this issue has not been addressed in the information submitted.
- They have concerns regarding the wwts and the percolation qualities of the soil and the adverse effect that an unsatisfactory disposal of effluent would have on local natural watercourses.
- There is an oversaturation of wwts in the Knockroe area and this proposed dwelling would be prejudicial to public health.
- They include other information and mapping regarding the history of the development.

## 7.0 RESPONSES

7.1 Clare County Council response to the grounds of appeal includes the following:

- *The Applicants were considered to comply with Settlement Location Policy as Ann Kretz is from the local rural area and has never been granted Planning Permission before.*
- *Regard was made to the existing derelict structure on site.*
- *The Applicants have altered the design of the proposed dwelling from a large two storey to a single storey dwelling of a more traditional design.*

They consider that the proposed development is in compliance with Settlement Location Policy as contained in the Clare CDP 2011-2017 as varied and will not be detrimental to the visual or residential amenities of the area.

- 7.2 The First Party response to the grounds of appeal includes the following:
- The points raised regarding the derelict dwelling are thoroughly inaccurate.
  - All reference to Mathew Broggy or his family have no relevance to this application. While he is the landowner from which the site is taken, the site is dedicated to the applicants and they will become full owners if permission is granted.
  - A letter of consent from Mathew to his sister Ann and her husband Guido to make the application was part of the application documentation.
  - The different spelling of the name was a typographical error.
  - Ann Kretz (nee Broggy) fully complies with the settlement policy CDP 3.11 of the Clare CDP.
  - The Planning Regs. deal with the issue of signatures.
  - The return of local people to their native place is provided for in the settlement policy CDP 3.11 of the Clare CDP.
  - There is no relevance in the other information submitted to this application.
  - They request the Board to up-hold the decision of Clare Co.Co. and allow Ann Kretz (nee Broggy) to return to her native place with her husband to build her new home for her retirement.

## 8.0 **PLANNING POLICY**

### 8.1 Clare County Development Plan 2011-2017 (as varied)

The subject site is located within an Area of Special Control (Strong Urban Pressure) to the west of Limerick City boundaries. Objective CDP3.11 New Single Houses in the Countryside within 'Areas of Special Control' (Map 3B refers) - regard is had to addressing the criteria in categories A-C relevant to demonstration of Local Need.

CDP3.15 refers to refurbishment of a Derelict Dwelling/Structure in the Countryside.

CDP8.8 concerns wastewater treatment systems for un-serviced development.

Chapter 16 has regard to Heritage Landscapes – (Map 16A refers). The subject site is located in a Working Landscape Objective - CDP16.3 refers.

Section 19.4.3 of the CDP states that “In terms of new houses in the countryside, the County Clare Rural House Design Guide should be used as a reference for applicants for planning permission.”

Appendix 1 provides the Development Management Guidelines –A1.2.1 addresses rural residential development and it refers to the County Clare Rural House Design Guide. A1.7.2 refers to Sight Distances.

### 8.2 The Sustainable Rural Housing Guidelines 2005

This seeks to encourage and support appropriate development at the most suitable locations. Section 3.2.3 concerns Rural Generated Housing and gives an example of Persons who are an intrinsic part of the rural community and Persons working full-time or part-time in rural areas. It is considered that as

per Appendix 3 of the Guidelines that the proposed site is located in a Stronger Rural Area.

Section 3.3 is concerned that the consideration of individual sites will be subject to normal siting and design considerations. These include the following:

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.
- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.
- The siting of the new dwelling integrates appropriately into its physical surroundings.
- The proposed site otherwise accords with the objectives of the development plan in general.

Section 4.4 is concerned with Access and restriction of such on National Primary and Secondary Roads. Regard is also had to Roadside Boundaries Section 4.5 is concerned with Protecting Water Quality and Site Suitability issues.

## **9.0 ASSESSMENT**

I have reviewed the proposal in the light of national planning guidelines, the CDP, and the submissions of the parties. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Rural housing policy,
- (ii) Land use and Proposed Development
- (iii) Design and Layout
- (iv) Back land and amenity,
- (v) Access,
- (vi) Drainage, and
- (vi) AA.

### **9.1 Rural Housing Policy**

The area in which the site is located is shown in the Clare County Development Plan 2011 – 2017 (CDP) as lying to the west of the Limerick City and in a rural area under strong urban pressure. Under Objective 3.11, this area is an area of special control for single houses in the countryside – Map 3B relates. The Criteria provide that the applicant must come within the definition of a 'Local Rural Person', the proposed site must be situated within their 'Local Rural Area' and the applicant must have a 'Local Rural Housing Need'. Therefore regard is had to the documentation submitted to establish the applicant's local need to reside on the subject site.

The applicant's address is given as Flawill Switzerland and the use of the proposed dwelling is stated to be a permanent place of residence. They have lived in Flawill, Switzerland since May 2002 to date where their occupation is stated to be 'farming'. Supplementary information provides that the applicant Ann Kretz (nee Broggy) was born in England in 1968 and returned to the Broggy family home at Derrymore, Meelick in 1970. She attended Meelick National School (1973-1981) and later Secretarial College in Limerick. She moved to Switzerland with her husband Guido in 2002. Ann and Guido are returning to Meelick in 2015 and wish to progress planning and building their

home. It is provided that Ann lived for 31 years at the family home in Derrymore Meelick. There is some discrepancy noted in the time period in the additional information submitted which provides that the applicant spent the first 23 years of her life a few hundred metres from the site and now wishes to return to her native place. However this is irrelevant as it exceeds the 7 years referred to in CDP 3.11 of the Clare CDP.

To substantiate a local rural housing need, the applicant must demonstrate that she is a local rural person who is from a local rural area and that she “does not or has not ever owned a house in the surrounding rural area (except in exceptional circumstances) and has the need for a dwelling for their own permanent occupation.” There is no evidence that the applicants have ever owned a house in the surrounding rural area as they are currently living and farming in Switzerland. In this case it is stated that the applicants are returning emigrants retiring to Ann’s native rural area (documentation submitted). Therefore it is considered that Ann is a ‘local rural person’ and wants to reside in her ‘local rural area’.

Section 3.2.3 of the Sustainable Rural Planning Guidelines 2005 refers to Rural Generated Housing and support for returning emigrants i.e People who are an intrinsic part of the rural community. This includes: *Returning emigrants who lived for substantial parts of their lives in rural areas, then moved abroad and who now wish to return to reside near other family members, to work locally, to care for elderly family members, or to retire should be also be accommodated.* Having regard to these issues it is considered that Ann Kretz as a local rural person has a need to reside in her local rural area as she is a returning emigrant. However a site specific need has not been established.

## **9.2 Land use and Proposed Development**

The application form provides that this is family land and that the total area and location of the land owned by the applicant and/or the vendor of the land (applicant’s brother Mathew Broggy) is 5.77ha. Details from Land Registry including a map showing this area has been submitted along with a letter of consent to apply for planning permission on these lands. The area of the site is 0.98ha and it is provided that there is a derelict dwelling on site which is connected to the family home via continuation of site access road as shown on the Map submitted.

Policy CDP 3.14 refers to Replacement of Substandard Habitable Houses in the Countryside. Clearly the structure on site is in a ruinous condition and is not habitable, therefore this policy does not apply. CDP 3.15 refers to Refurbishment of a Derelict Dwelling/Structure in the Countryside where applications are permitted provided that they meet a number of criteria. The applicants claim to meet this criterion. This includes that the external walls of the dwelling are substantially intact. As shown on the photographs taken on the site visit this is clearly not the case, the structure is in a ruinous condition. Regard is had to the historic mapping which shows some sort of a small structure in this corner. The Third Party question whether it was ever used as a dwelling and no documentation has been submitted to support that it was ever used as a dwelling or when such a use occurred. I would not consider



that this Policy is complied with relative to these issues. Therefore I would consider that the proposed dwelling constitutes a new build on the site.

### 9.3 Design and Layout

The application as originally submitted proposed to construct a split level house, that would have a g.f.a of 286sq.m with a detached garage of 45.36sq.m. It also provides that the existing 'derelict dwelling structure' is 48sq.m. This differed from the Floor Plans submitted which comprised 325.68sq.m and incorporate a small linked area to the 'derelict dwelling' with a total floor area of 62.12sq.m. The latter is to be used as a wc, boiler house, playroom, fitness suite and hall area.

However in view of the concerns of the Planning Authority that the proposal did not address the concerns regarding the design and layout of the two storey house type refused in Reg.Ref. P13/699 (as noted in the History Section above) revised plans and particulars were submitted by way of additional information relative to the current application.

The revised plans show a single storey dwelling that is more attached and integrated with the footprint of the original structure. This is to provide a more modest 3no. bedroomed house, with 2no. of the bedrooms located within the footprint of the original structure. The g.f.a of the new build is shown as 111.80sq.m and of the original structure 62.12sq.m i.e this would give a total floor area of 173.92sq.m. The height of the proposed dwelling is shown as c.5m to ridge level. It is considered that if the Board decide to permit that the revised proposals are preferable on this elevated site.

### 9.4 Backland and Amenity

The site has no frontage to the local third class road from which it is accessed via a laneway and it is located in an elevated position within agricultural land to the north and rear of existing dwelling houses in this area of ribbon development along the L3104. Accordingly, this site constitutes a backland one. There is concern that the proposed siting would create and set a precedent for undesirable and haphazard backland development. The First Party provides that this is not a relevant consideration as an existing dwelling is a major part of the proposal.

Regard is had to the Clare CDP and to Appendix 1 A1.2.1 Rural Development in Residential Areas. This has regard to provision of a minimum of 30m road frontage being normally required for sites and consideration of *backland sites on a case by case basis where it can be demonstrated that there are no residential or visual amenity impacts.*

The site is located in the Western Corridor Working Landscape, Objective CDP 16.3 refers. This includes reference to the selection of appropriate sites within this landscape together with consideration of the details of siting and design directed towards minimising visual impact.

It is considered that having regard to the revised lower profile house type the residential/environmental impacts would be capable of being satisfactorily mitigated. However, the very presence of the proposed dwelling house within

the site and its immediate undeveloped rural setting would cause it to appear anomalous and visually intrusive. Thus, this dwelling house would indeed represent haphazard back land development, which should in principle be opposed.

## **9.5 Access**

It is proposed to use the existing access to the laneway from the L3104. At present the access is unsurfaced and slopes down in a steep gradient to the road. There are ribbon houses on each side of the access. Visibility at the access is restricted to the north due to the bend in the road. Regard is had to Section A1.7.2 of Appendix 1 of the Clare CDP which provides the sight distances for various road design speeds. I did not see any particular speed restrictions in the vicinity on this narrow stretch of the county road so it would be generally supposed that 70 to 90m sightlines would be needed. As noted on the scale 1:2500 map submitted the sightlines to the north would appear to be c.50m so there would be concern that the intensification of the usage of this entrance which presently serves the large timber shed and agricultural lands, would lead to traffic hazard. It would also increase the proliferation of entrances to residential properties on this stretch of road.

## **9.6 Drainage**

It is proposed to provide a wastewater treatment system and percolation area close to the more elevated northern boundary of the site. They have included a Site Characterisation Report (as per EPA Code of Practice 2009 – Wastewater Treatment Systems for Single Houses) which includes photographs, and a section showing the percolation area. This provides a description of the site, it notes that the site is large enough and all separation distances will be achievable. Also based on the T/P values obtained and a visual assessment the site will be able to percolate, attenuate and dispose of the wastewater from the subject site. Based on the findings it is proposed to install a septic tank and a description is given of the percolation trenches proposed. Details are given of drains and a small stream on site. Discharge will be to groundwater. There are no springs or wells located in the vicinity. The Groundwater Protection response is given as R1. The Aquifer under the site is described as poor (P1) and Vulnerability is both High (H) and Moderate (M). While the site is some distance from the nearest houses to the south, the Site Assessment notes that there are 5 houses within 250m of the site. Therefore while the site may be suitable for the siting of a septic tank and percolation system there is concern that the proposal will lead to an increase in the proliferation of septic tanks/wwts in this unserviced rural area.

It is provided on the application form that there is an existing connection to the public mains. Details of the connection have not been given. It is however noted that the site is a considerable distance from the public road.

## **9.7 APPROPRIATE ASSESSMENT**

A Habitats Directive Project Screening Assessment has been completed by the Council. This provides that there is no impact on habitats in SACs or SPAs. It concludes that significant impacts can be ruled out. Having regard to the NPWS website the closest Natura 2000 sites are the Lower River Shannon SAC which is c.2.7kms from the site and the River Shannon and

River Fergus Estuaries SPA which is c.2.5kms. It is noted that the Site Characterisation Form provides that there is a drain at the back of the field and along the middle of the site and that both drains discharge into a small stream along the western boundary of the field. The stream flows southwards. Therefore there could potentially be a source/pathway/receptor route between the site and other watercourses that ultimately discharge to these Natura 2000 sites. This has not been investigated. Nevertheless, provided good construction management practices are pursued and the wwts is properly constructed and maintained in accordance with standards, the risk of any significant effects on the Conservation Objectives of these Sites would not arise.

However having regard to nature and scale of the proposed development and the nature of the receiving environment and the distance to the nearest European sites, it is not considered 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.

## **10.0 CONCLUSION AND RECOMMENDATION**

Having regard to the documentation submitted, planning policy in the Clare CDP and in the Guidelines relevant to housing development in the rural area, I would consider that this proposal would not comply with policy in that it would lead to haphazard backland development and an intensification of the use of a substandard entrance onto this narrow county road at a point where the sightlines are restricted in a northerly direction.

In the light of my assessment, I recommend that permission for the proposed development at Knockroe, Meelick, Co. Clare, be refused for the reasons below:

### **REASONS**

1. The entrance to the site is located in an area of ribbon development and the site has no frontage onto the local public road. This is an elevated site in the unzoned rural agricultural area to the rear of these houses and the proposal would constitute haphazard backland development which would set an undesirable precedent for this type of development and be seriously injurious to the amenities of the area. It is considered that the proposed development would constitute an incongruous feature in the landscape and would seriously injure the visual and residential amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed dwellinghouse would generate a material increase in the number of vehicular movements at this substandard junction to the laneway that links the local third class road to the development site. The northern sightline available to drivers exiting this laneway is seriously substandard and so the increase in turning movements associated with the proposed development would endanger public safety by reason of traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Angela Brereton,  
Planning Inspector,  
2<sup>nd</sup> of February 2016