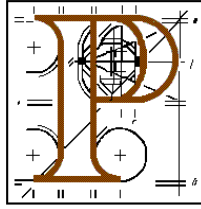


## An Bord Pleanála



## Inspector's Report

**PL 03 245877**

**DEVELOPMENT**

Construction of a dwelling house and associated domestic garage and installation of a proprietary treatment system and percolation area.

**LOCATION**

Knocknagroagh, Ballyvaughan, Co. Clare.

**PLANNING APPLICATION**

**Planning Authority**

Clare County Council

**P. A. Reg. Ref.**

P15-655

**Applicant.**

Mildrid Collins

**Decision.**

Grant Permission

**PLANNING APPEAL**

**Appellant:**

Tony Sheil and Margaret Walsh

**Types of Appeal:**

Third Party Appeal against Grant of Permission.

**Date of Inspection:**

12<sup>th</sup> February, 2016.

**Inspector**

Jane Dennehy

## 1. SITE LOCATION AND DESCRIPTION

- 1.1 The site has a stated area of 2,400 square metres is subdivided from a field located at the eastern edge of Ballyvaughan on the northern side of the N67 route through the village in the direction of Kinvara. The site location is within the 50 kph maximum speed limit for the village where there is good vertical alignment, some bends, a broken white line at the centre and grass verges to either side. There are houses, mostly bungalows and dormer bungalows on both sides of the road including a small holiday home scheme with an entrance roughly opposite the site. There is an agricultural entrance and indigenous hedgerow and stone walling on the site and adjoining road frontage. There is a semi derelict shed on the site adjacent to the road frontage which has a stated floor area of ninety five square metres and a smaller shed to the rear with an approximate floor area of forty five square metres. The ground is under pasture and the level is relatively flat.
- 1.2 There is house on the lands to the east side and the remainder of the field to the west from which the site is formed is undeveloped.

## 2.0 PLANNING HISTORY.

- 2.1 The site has the following planning history according to the planning officer's report:

**P. A. Reg. Ref. 14/597:** Permission was refused for two houses, garages, proprietary treatment systems with discharge to the public sewer and site development works for the following two reasons reproduced in full below:

- 1. The proposed development involves the creation of a new access onto the adjoining N67 at a point within the speed limit zone for the village of Ballyvaughan. Having regard to the details as submitted with this application, the Planning Authority are not satisfied that adequate sight lines can be attained at the proposed new vehicular access to the site and consider that the development as proposed would result in a traffic hazard at this location. The proposed development would therefore result in a threat to public safety by way of a traffic hazard.*
- 2. Having regard to the existing deficiencies in the public sewerage system at this location and the proposal to discharge to the public sewer, it is considered that the proposed development would be premature by reference to the existing deficiency in the public sewer which serves the area, and the period within which the constraints involved may be expected to cease.*

**P. A. Reg. Ref. 13/91:** Permission for demolition of the roadside sheds and construction of a dwelling, garage and mains sewerage connection

was refused for three reasons, two of which are the same as (1) and (2) above. The third reason is that the proposed development is in material contravention of the North Clare Local Area Plan as it is not for permanent occupation.

**PL 03 217399/P. A. Reg. Ref. 06/258:** The planning authority decision to refuse permission for a development of nine houses on adjacent lands was upheld following appeal in 2006. The reasons related to visual impact on the scenic route and the area, deficiencies in the water treatment system serving the area and haphazard development. (A copy of the Inspector's report and Board Order is on file.)

**PL 03 221777/P. A. Reg. Ref. 05/1870:** The planning authority decision to grant permission for a development of twenty one houses on adjacent lands to the north was upheld following appeal in 2007. ((A copy of the Inspector's report and Board Order is on file.)

**P. A. Reg. Ref. 08/1207:** Permission was refused for twenty three house on the lands to the east. Details are not available.

### 3.0 **DEVELOPMENT PLANS.**

#### 3.1 The operative county development plan is the **Clare County Development Plan, 2011-2017.**

The site is designated as a "large village" in the Settlement Hierarchy in the Core Strategy. The N67 onto which the site has frontage is subject to the specific objective: "Scenic Route." according to Objective 16.6.

#### 3.2 The operative Local Area Plan is the **North Clare Local Area Plan, 2011-2017.**

The site location is within the development boundary of Ballyvaughan. There is provision for new residential development which is for permanent occupation in Ballyvaughan. The lands to the west side of the appeal site are subject to the zoning objective "Low Density Residential".

### 4.0 **THE PLANNING APPLICATION**

#### 4.1 The application lodged with the planning authority on 24th September, 2015 indicates proposals for construction of a house with accommodation over two floors, a detached garage entrance and effluent treatment system. The stated floor area of the proposed house is 192 square metres and it is to have a ridge height of 7.615. The stated floor area of the proposed detached garage is twenty four square metres.

- 4.2 The proposed entrance is to be created at a position on the frontage that is to the west of the existing entrance and the entrance proposed in the previous unsuccessful applications.
- 4.3 A ('Tricel Novo') waste proprietary waste water treatment plant providing for (Sandcel") tertiary treatment. Included are a fully completed site characterisation form is included and a letter of consent by the adjoining land owner, (witnessed by Mildred Collins) to the setting back of a front boundary wall in third party ownership to facilitate achievement of sight lines at the entrance.
- 4.4 **Third Parties:** An objection was lodged by owners of a house in "The Dolman Village" at Ballyvaughan indicating concerns about adequacy of the access, the effect on the village, visual impact and adequacy of the size of the site. This party is the appellant party.
- 4.5 **Prescribed Bodies:** A submission was received from An Taisce, (prescribed body) relating to the design and impact on the landscape and streetscape and the suitability of the waste disposal system for treatment in view of concern as to pollution of ground water. Reference is made to the prior application under P. A. Reg. Ref. 14/597 with regard to the deficiencies in the public sewerage system.
- 4.6 **Internal Technical Reports:** The Environmental Scientist's report contains a statement that a suitable treatment plant can be accepted but connection to a public sewer is best practice but it is not available at present. The District Engineer's Department' report refers to the necessity for seventy metre sightlines and the necessity for set back of the adjoining property's boundary wall. The report of Irish Water indicates no objection.
- 4.7 **Planning Officer's Reports:** According to the planning officer:
- A dwelling is consistent with the policies and objectives for lands zoned for low density development;
  - The setback for the access and its construction in advance of the dwelling can be addressed by condition. (DMURS requirements relating to sightlines within the 50 kph zones at settlements are acknowledged).
  - The site is not in or close to a flood zone and considers the proposed treatment system and percolation are acceptable.

## 5.0 DECISION OF THE PLANNING AUTHORITY.

- 5.1 By Order dated, 17<sup>th</sup> November, 2015, the planning authority decided to Grant Permission subject to conditions which include the following requirements:

Condition No 2: completion of the entrance (with 70 metres sight lines) prior to commencement of the development works. The entrance to have a setback of 2.4 metres with splays at an angle of 45 degrees of bellmouth to give a width of 13.5 metres at the new fence line. The roadside boundary is to be defined by a wall in local stone or earthen mound and indigenous planting at a height not in excess of 1.2 metres.

Condition No 5: The dwelling is for permanent occupation only.

Condition No 7: compliance requirements for finishes and materials for reasons related to visual amenity.

Condition No 13: requirements of a standard nature relating to the wastewater treatment system and polishing filter, certification and maintenance contracts.

## **6.0 THE APPEAL.**

6.1 An appeal was received from Delahunty and Harley on behalf of the appellants, Tony Sheil and Margaret Walsh on 14<sup>th</sup> December, 2015. The appellants who reside in Dublin have a holiday home at The Dolmen Village which adjoins the appeal site.

6.2 According to the appeal:

- The proposed development sets undesirable precedent and diminishes the residential amenity of their holiday home, the village and the sensitive setting of the village.
- The decision to grant permission is inconsistent with prior refusals for permission and there is no explanation for the change in judgement by the planning authority.
- The elevation would be excessively imposing, due to the raised ground level. The design would also not be consistent with the examples in the Rural House design guide for County Clare.
- The proposed development would create ribbon development to the east of the village.
- The site is insufficient in size for a single dwelling.
- The proposed development would set precedent for similar development between the site and the Dolman village.
- Resolution of design and other matters by Conditions Nos.1, 2, 4, 7 and 13 do not allow for third party involvement. A request for additional information would have been appropriate.
- The local sewerage system is overloaded and the proposed private treatment plant would lead to impact on the environment especially

where there is a concentration in a village and where there are sensitive soil types and potential precedent.

- The road is narrow, unsafe and hazardous and it will result in dangerous. Permission has previously been refused on grounds of traffic safety. (P A. Reg. Ref. 13/91 and 14/597 refer.) The new position and sightlines are little altered and the location opposite an entrance to existing dwellings will create a dangerous crossroads.
- The site is adjacent to the scenic route – Permission was refused under P. A. Reg. Ref. 06/258 because of the scenic route.
- The site location is 300 metres from the Inner Galway SPA The Galway Bay Complex SAC, the Galway Bay Complex pNHA and 530 metres from the Moneen Mountain Sac and 940 metres from the Ballyvaughan Turlough SAC. They may be affected by run-off from the treatment plant and the site demands special protection.

## **7. RESPONSE TO THE APPEAL BY THE APPLICANT.**

7.1 A submission was received from Oliver Higgins on behalf of the applicant on 8<sup>th</sup> January, 2016. An outline of the objections follows:

- The dwelling is suitable for the area which is zoned for low density development. It accords with the rural house design guide is contemporary in design and detail. There is little inter-visibility between the site and the Holiday village. The public road is 9.2 mAD (Malinhead) the proposed house is 9.6 mAD which is reasonable and between 10.0m and 10.05 contour.
- The location is within the designated settlement and is not ribbon development. The site at 2400 square metres is much more generous than the Dolman Village sites at 700 square metres.
- The dwelling is modest and will not impact on views.
- It is agreed that there is consistency in past refusals but no principle can be established from the history. The application overcomes the difficulties that arise in the previous proposal for two dwellings. The conditions requiring subsequent agreement are for procedure and clarity and do not impact on the appellant. The appellant objections are not specific.
- The entrance is relocated to ensure the 70 metre unobstructed sightline is achieved. It is available within the speed limit where slow traffic and turning is expected. It exceeds the current DMURS standard of 45 within a 50 kph zone. The entrance is not opposite an entrance road way and will not create a crossroads.

- The planning authority is satisfied that its screening assessment is sufficient with regard to environmental and appropriate assessment issues.
- The appellants have not provided the house number within the holiday village of their Dolman Village home; they have serially objected to development on the site which has no substantiated impact on them. The site is zoned and therefore earmarked for development. The Appellants should have objected to the zoning proposal.

## 8. **RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY**

There is no submission from the planning authority on file.

## 9. **EVALUATION.**

9.1 The issues central to the determination of a decision can be considered under the subheadings below:

- Settlement policy and zoning.
- Impact on Visual and Residential Amenities.
- Impact on designated scenic route.
- Traffic safety.
- Environmental Impact.
- Finalisation of Details by Condition.

### 9.2 **Settlement policy and zoning.**

The site is designated for development by reason of the location is within the development boundary for Ballyvaughan which is categorised as a 'large village' in the settlement hierarchy and by reason of the zoning objective for low density development. There is no objection in principle to residential development on the lands and in this regard it is noted that it has been established that the proposed development is not for use as a holiday home in that the applicant satisfies the requirement of local area plan that the proposed dwelling be for permanent occupation. (The proposed demolition of the shed is exempted development.) The remarks about the planning history have been noted and given that the proposed development is consistent in principle with settlement policy objectives it can be accepted subject to the technical considerations being acceptable.

### 9.3 **Impact on Visual and Residential Amenities**

Development in Ballyvaughan generally has no strong characteristic features and is mainly pastiche with residential development comprising

one storey, two storey and dormer dwellings on single plots and clustered holiday home development. The relatively deep setback position within the site, the ground levels and finished floor levels, dwelling and detached garage size, form and height, finishes and design detail inclusive of the fenestration projecting above the eaves are fully acceptable. It is relatively understated and inconspicuous in visual impact. It integrates well with the building line of the adjoining house and the site layout adjoining the western boundary. It is appropriate for low density lands at the outer edge of a village but within the development boundary. To this end, it is not accepted that there is adverse impact on visual or residential amenities in the area.

#### **9.4 Impact on designated scenic route.**

Given the above observations remarks as to the relatively inconspicuous nature of the proposed development, compatibility with the adjoining development and the location on zoned land within the development boundary of Ballyvaughan it is considered that there is no potential adverse impact on the designated scenic route along the N67. There is no obstruction of any specific views or prospects of significance due to the proposed interventions involved.

#### **9.5 Traffic safety.**

It is demonstrated that the location of the proposed entrance and alterations to the site frontage (with consent of the owner of the adjoining zoned land to the east) ensure that satisfactory standards can be achieved owing to the location within the settlement boundary's 50 kph zone and the condition of the road, a national route (N67) and the location of entrances to residential development in relatively close proximity on both sides of the road, notwithstanding the the absence of public footpaths. However, it would be desirable that a single entrance serve the proposed development and any possible future development on the land to the east.

#### **9.6 Environmental Impact.**

The area is a karst limestone area where the aquifer has high vulnerability. However it is considered that it has been demonstrated that the proposed tertiary treatment system, which is to service a pe of six and a single dwelling is designed to ensure performance in compliance with minimum standards set out in the EPA Code of Practice: *Waste Water Treatment and disposal Systems Servicing Single Houses* – (EPA 2009). Given the achievement of satisfactory standards, and the limited size of the development, it is agreed with the planning authority that in the absence of the scope for direct connection to the public sewer, the proposed arrangements are acceptable.



## 9.7 Finalisation of Details by Condition.

Condition Nos 1, 2, 4, 7 and 13 for which compliance submissions are required with regard for clarification and finalisation of details have been reviewed. It is considered that the use of conditions to resolve these details is consistent with the recommendations within the Development Management Guidelines (DOEHLG, 2007.) Resolution through a request for additional information allowing for further third party input would have been unwarranted.

## 10. APPROPRIATE ASSESSMENT SCREENING.

- 10.1 The planning officer has conducted an appropriate assessment screening details of which are available on file. The site is 300 metres from the Galway Bay Complex SAC, (000268) the Inner Galway Bay SPA, 530 metres from the Moneen Mountain SAC and 940 metres from the Ballyvaughan Turlough SAC.
- 10.2 The conservation objectives are to restore and maintain the favourable conservation conditions of the listed habitats and species for each site for which attributes and targets are specified. Several Annex 1 and 2 habitats and species have been selected for the Galway Bay SAC and Moneen Mountain SAC, The restoration or maintenance of the population and distribution of a number of identified water bird species and wetlands is specified for the Galway Bay SPA, and turlough for the Ballyvaughan Turlough SAC.
- 10.3 There are no watercourses within or in close proximity to the site and effluent disposal is to the ground from which treated effluent could reach and affect designated areas. The karst limestone ground conditions have a high vulnerability. The development is a single domestic dwelling and it has been demonstrated that the design and performance of the proposed tertiary treatment system which is to serve a PE6 would achieve standards consistent with the EPA Code of Practice (*Waste Water Treatment and disposal Systems Servicing Single Houses* – (EPA 2009). The proposed development would not be liable to have adverse impact on water quality or consequentially on designated bird or plant species which could be affected by water quality.
- 10.4 It is considered reasonable to conclude on the basis of the information available that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant on the Galway Bay Complex SAC, the Inner Galway Bay SPA, the Moneen Mountain SAC and the Ballyvaughan Turlough SAC or other European site in view of their conservation objectives. It is therefore considered that Stage 2 Appropriate Assessment is not required.

## 11. CONCLUSION AND RECOMMENDATION

- 11.1 In view of the foregoing it is recommended that the appeal be rejected and that the planning authority decision to grant permission be upheld subject to conditions with similar requirements of the conditions attached the planning authority decision.

## DECISION.

**Grant Permission on the basis of the Reasons and Considerations and subject to the Conditions set out below.**

### REASONS AND CONSIDERATIONS

Having regard to the location within the settlement boundary for Ballyvaughan of the proposed development which is for permanent occupation and which is within an area zoned for low density residential development according to the Ballyvaughan Local Area Plan, 2011-2017; to the site layout, scale, height and design of the proposed dwelling, the achievement of satisfactory standards by the proposed tertiary treatment system and by satisfactory sightlines in either direction at the proposed entrance, it is considered that the proposed development would be in accordance with the local area plan, would not be seriously injurious to the residential and visual amenities of the area or designated scenic views, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

### CONDITIONS.

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on 5th October, 2015 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and implemented in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

- 2 The tertiary treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on 14<sup>th</sup> September 2015 and 5th October, 2015 and the requirements of the document "*Wastewater Treatment Manual: Treatment Systems for Single Houses*", Environmental Protection Agency (current edition).

- (a) No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.
- (b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
- (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.
- (e) 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 and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of clarity and public health.

- 3. The entrance and roadside boundary treatment shall be located, constructed and maintained in accordance with the details submitted to the planning authority on 14<sup>th</sup> September 2015 and 5th October, 2015. New boundary treatment which shall not exceed 1.2 metres in height shall be setback by a minimum distance of 2.5 metres from the edge of the carriageway and the level shall match that of the road.

**Reason:** In the interest of public safety, the amenities of the area and clarity.

- 4. 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.

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

5. The site shall be landscaped, using only indigenous deciduous trees 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. This scheme shall include the establishment of an indigenous hedgerow along the side and rear boundaries of the site. Any plants which fail are removed or become seriously damaged or diseased, within 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.

6. Details of the materials, colours and textures of all the external finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Roof colour shall be blue-black, black, dark brown or dark grey in colour only.

**Reason:** In the interest of visual amenity.

7. The proposed dwelling is for permanent occupation only and the garage shall not be used for human habitation or any purpose other than ancillary use incidental to the residential use of the main dwelling.

**Reason:** In the interest of clarity, to ensure consistency with the North Clare Local Area Plan, 2011-2017 and the proper planning and sustainable development of the area.

8. 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.

**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.

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**Jane Dennehy,  
Senior Planning Inspector.  
19<sup>th</sup> February, 2016.**