

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL07.246357

Development: Retention of shed and removal of enurement clause at Dooroy, Clonbur, Co. Galway

Planning Application

Planning Authority: Galway County Council

Planning Authority: Reg. Ref.: 15/1605

Applicant: Richard Roche

Planning Authority Decision: Refuse permission

Planning Appeal

Appellant: Richard Roche

Type of Appeal: First party

Date of Site Inspection: 9th of June 2016

Inspector: Angela Brereton

1.0 SITE LOCATION AND DESCRIPTION

The site is located off a Regional Road (R345), approximately 1.9km south of Clonbur in the townland of Dooroy Td. The town of Cong is approx. 6kms to the north east. The site is proximate to the shores of Lough Corrib and is on the lakeshore side of the Clonbur to Cornamona road.

There is a dormer bungalow on site and there is a very steep vehicular access down from the gated entrance off the R345. The site area appears to have been partly cut out of the rock face at the rear and the dwelling and shed are sited well below and are not visible from the public road. The shed for retention is of corrugated iron type material and is painted green and in view of its location adjacent to the rock face at the side of the house is not very visible in the landscape. The site is well landscaped and the dwelling does not appear to be occupied at present. There are two other dwellings in proximity to the west and all have good views to Lough Corrib.

2.0 PROPOSED DEVELOPMENT

Permission is sought for the following:

- a) To retain a domestic shed to the side of the existing dwelling house (g.f.a 34.13sq.m);
- b) To remove lifetime enurement clause attached to previously approved planning permission (Reg Ref.nos. 99/3053 and 02/2111 refers) along with all associated services at above address.

The application form provides that the owner of the site is Dr. Anthony Cunningham and the applicant is applying on behalf of the owners to get the enurement clause removed. The site area is given as c. 0.27ha. It is provided that there is an existing connection to the public mains and a conventional septic tank on site.

A letter has been submitted with the application from DMC, Donal McCormack Design, architecture, planning and engineering providing details relative to the background to the current application.

A Site Layout Plan and floor plans and elevations showing the shed for retention have been submitted.

3.0 PLANNING HISTORY

- Reg. Ref. 99/3053 – Permission was granted to Gerry Kinneavy for a dwelling house and septic tank and percolation area subject to 5no. conditions. The following are of note relevant to the occupancy:

Condition no.1 – *The proposed house shall be restricted to use as a dwelling by the applicant, applicant's family, heirs, executors, administrators or persons involved in*

agricultural related activities in this rural area, unless otherwise agreed by the Planning Authority. No development shall be commenced until an agreement embodying a provision to that effect has been entered into with the Planning Authority pursuant to Section 38 of the Local Government (Planning and Development) Act, 1963.

Reason: To ensure that development in the area in which the site is located is appropriately restricted.

Condition no.5 – The site shall be used for private family residential purposes only and shall not be used in connection with any other business or trade.

Reason: In the interest of proper planning and development.

- Reg. Ref. 02/2111 – Permission was granted subject to conditions to Gerry Kinneavy for retention of dwellinghouse, conservatory with septic tank/percolation area (Reg.Ref.99/3053). These conditions included Condition nos. 1 and 5 of the earlier permission, except that the wording of Condition no.1 was changed to include *pursuant to Section 47 of the Local Government (Planning & Development) Act, 2000.*

Regard has been had to the Board website and there does not appear to have been any similar type appeal case (relative to enurement clause) in the area.

4.0 PLANNING AUTHORITY APPLICATION

Planner's Report

The Planner provided that the proposed development has been assessed having regard to the planning history and policies and objectives of Galway County Council as set out in the current plan in particular Objective RHO13 (enurement clause) and considered that based on this assessment the proposal would be contrary to the proper planning and sustainable development of the area and would be contrary to the objectives and policies as set out in the CDP 2015-2021 and to the proper planning and sustainable development of the area. This Report also provides that significant adverse impacts on habitats and species within the proximate Lough Corrib SAC and SPA can be ruled out due to the nature of the proposed project in conjunction with the distance and lack of connectivity between the application site and the Natura 2000 site. Therefore they provide that no further assessment is required in relation to habitats.

5.0 PLANNING AUTHORITY DECISION

On the 25th of February 2016 Galway County Council refused permission for the following reason:

Notwithstanding submissions to date, the development if permitted, would contravene materially a condition (enurement clause) attached to an existing permissions(s) (99/3053 & 02/2111) for development. Accordingly, the proposed development would be contrary to the proper planning and sustainable development of the area.

6.0 GROUNDS OF APPEAL

DMC-Donal McCormack Design, architecture, planning, engineering has submitted a First Party appeal on behalf of the applicant. The grounds of appeal include regard to the planning history and provide that a Section 47 agreement could never be entered into in this case. They consider that there is nothing now legally preventing the Council from removing the lifetime enurement clause in place.

A previous similar recent application Reg.Ref.14/1318 was withdrawn, because the Council at that time indicated that they could not consider the removal of the lifetime enurement clause as it was not originally in the applicant's name nor had it been placed in his name at any time. They have now taken legal advice on board and have made this new application. Further regard to their grounds of appeal is included in the Assessment below.

7.0 RESPONSES TO GROUNDS OF APPEAL

Galway County Council has not responded to the grounds of appeal.

8.0 POLICY CONTEXT

8.1 County Policy

The operative plan for the area is the Galway County Council Development Plan 2015 - 2021.

Section 3.7 refers to Single Housing in the Countryside and Map RH01 identifies Rural Area Types – the site is just outside the 'Rural Area under Strong Urban Pressure', Section 3.8.2 refers. This includes to protect areas located in landscape categories 3,4,5.

Map RH02 shows the site is located in an area designated as Landscape Sensitivity 3-5 and within An Gaeltacht.

Objective RHO 3 - Rural Housing Zone 3 (Landscape Category 3, 4 and 5)

Objective RHO 13 - Lifetime Enurement Clause

Map LCM1 shows that the site is located in an area of outstanding landscape value adjoining Lough Corrib. Map LCM2 shows the site is within Class 4 (where Class 1 is the least sensitive and Class 5 the most sensitive).

It is located within 100m of a Restricted Regional Route.

8.2 National Policy

The Sustainable Rural Housing Guidelines for Planning Authorities, April 2005

- Section 4.7 and Appendix 1 refers to occupancy conditions

8.3 Legislation

The Planning and Development Act 2000 (as amended)

- Section 47 of this Act refers to Agreements regulating development or use of land.

9.0 ASSESSMENT

Having regard to the above, and having inspected the site and reviewed all documents on file, the following is my assessment of this case. Issues to be considered in the assessment of this case are as follows:

- Regard to the First Party case
- Regard to the Council's case
- Regard to removal of occupancy condition
- Retention of the Shed
- Appropriate Assessment

9.1 Regard to the First Party case

They provide that the relevant permission for this property was granted under Reg.Ref.02/2111, which was a retention application. They note that Condition no.1 required a Section 47 agreement to be entered into *prior to the commencement of development*, which was not achievable as this was a retention application. They provide that the condition in place in the 2002 application was incorrectly stated and placed a situation on the planning status that meant it could never have been considered in compliance with planning permission.

They note the property is now under new ownership and it is imperative that this enurement clause condition be removed to assist in regularising the legal status of the property in place. Their client has sold the property as can be noted on the planning files and as such wishes to regularise the position of the property for the new owner. A letter has been submitted from Dr. Anthony Cunningham, to authorise Richard Roche and Mary Roche to lodge this application for Retention Permission.

They consider there is nothing legally precluding Galway County Council from removing the lifetime enurement clause in place. They provide that the Planning Department when considering the application should not have solely relied on the basis of no agreement been entered into when making a decision.

Pursuant to Section 32(2)(a) of the Planning and Development Act 2000 they are obliged to consider the proper planning and sustainable development of the area. In this instance the removal of a condition that could not have been complied with is not contrary to the proper planning and sustainable development of the area. They consider this condition should be removed in order to regularise the planning status of the property as now exists.

They refer to Policy HP27 which does not stipulate that a condition cannot be removed if in fact an agreement was never entered into. They consider that this policy does not apply in this case and this application has to be considered on its merits. It is of note that the current GCDP does not include reference to this policy.

They consider that by basing a decision solely on the fact that a section 47 agreement was never entered into, the Council are limiting the deciding factor of these applications on something that is incorrectly in place for many years now and could never have been complied with. They are anxious that this application be decided on its merits in attempting to remove an incorrect condition that should not have been placed on this property.

9.2 Regard to the Council's case

While they did not respond separately to the grounds of appeal, their reason for refusal as based on the Planner's Report is concerned that the applicant (Richard Roche) has not fully proven that he resided in the dwellinghouse for the last seven years in accordance with Objective RHO13 of the GCDP 2015-2021 i.e:

Lifetime enurement clauses will be considered to have expired after a period of seven years of full time occupancy by the applicant. Actual removal of the enurement clause will have to be established by a planning application.

They note that notwithstanding this the applicant (Richard Roche) is not the person who the lifetime enurement clause was attached to under the planning permissions Reg.Refs.99/3053 and 02/2111. They provide that the enurement clause was attached to the permission for Gerry Kinneavy. They note that there is no record of transfer of the enurement clause to the current applicant Richard Roche. It is also noted that the current application form refers to Dr. Anthony Cunningham as being the owner's name. Therefore they provide that the proposed application would contravene condition no.1 of the earlier planning permissions.

9.3 Regard to removal of Occupancy Condition

Section 39 (2) of the Planning and Development Act 2000 (as amended), enables a planning authority and An Bord Pleanála to attach a condition to a grant of

planning permission for a structure which is to be used as a dwelling, specifying that such use may be restricted to use by persons of a particular class or description and that provision to that effect shall be embodied in an agreement under Section 47 of the Act.

Section 47 of the Act, provides that a planning authority may enter into an agreement with any person for the purposes of restricting or regulating the development and use of land permanently or for a specified period. Regard has been had to Objective RHO 13 of the GCDP – Lifelong Enurement Clause which expires after 7 years as noted above.

An Enurement Clause requires that where permission is granted, that the applicant lodge with the Land Registry a burden on the property, in the form of a Section 47 agreement, restricting the use of the dwelling for a period of 7 years to the applicant, or to persons who fulfil the criteria set out in Objective or to other such persons as the Planning Authority may agree in writing.

Objective RHO 3 of the GCDP refers to occupancy in Rural Housing Zone 3 (Landscape Category 3, 4 and 5) where applicants are required to demonstrate their Rural Links to the area and are required to submit a Substantiated Rural Housing Need and includes:

Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis. An Enurement condition shall apply for a period of 7 years, after the date that the house is first occupied by the person or persons to whom the enurement clause applies.

The ‘Sustainable Rural Housing Guidelines for the Planning Authorities’ issued by the Department of the Environment, Heritage and Local Government (2005), provide specific guidance in relation to occupancy conditions. Section 4.7 refers to occupancy conditions and recommends that wording be used in conditions such that the dwelling shall be occupied by the applicant, members of the applicant’s immediate family or by any other person who has similar links’. This section is also concerned about the inflexible nature of such long term agreements. Appendix 1 of Guidelines indicates that seven years would be an appropriate period for such an occupancy condition.

As noted in the History Section above there were two relevant planning permissions Reg.Refs. 99/3053 and 02/2111. The information submitted provides that subject dwelling was constructed by the then applicant Gerry Kinneavy in 2002. Details have not been submitted as to how long he resided there. It appears that the property has since changed hands. However having regard to the length of time which has passed since the construction and occupation of the dwelling over

fourteen years ago and the provisions of both the Sustainable Rural Housing Guidelines for Planning Authorities and the current County Development Plan specifically policies RHO 3 and RHO 13, which requires Section 47 agreements for a period of seven years, it is not considered reasonable that occupancy be further restricted given the significant changes in policy and guidance in relation to the time restriction on the occupancy of rural dwellings.

9.4 Retention of the shed

The application form provides that the shed for retention is 34.13sq.m. The drawings submitted show the floor plans and elevations. It is shown with a pitched roof 2.75m in height. As shown on the Site Layout Plan the shed is located to the west of the dwelling. As the site for the dwelling is much lower than the road and has been cut out of the rock face at the rear, and in view of the landscaping, the house and shed are not visible from the road. The house commands a good view of Lough Corrib. However it is considered that the siting of the shed is unobtrusive and also in view of its dark green colour it is not particularly visible in the landscape. It is referred to as being a domestic shed in the public notices. It is recommended that if the Board decide to permit retention that this should include a condition restricting its usage to domestic, i.e. for storage incidental to the use of the dwelling house.

9.5 Appropriate Assessment

The proximity to Lough Corrib SAC and SPA have been noted, however having regard to the established residential use of the site, the nature of the proposal and separation distance and lack of connectivity to the nearest European site, no appropriate assessment issues arise and 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 CONCLUSIONS AND RECOMMENDATION

I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, to the nature and scale of the retention development i.e. a shed for domestic use, the particular circumstances of the case, the planning history of the site, the Sustainable Rural Housing Guidelines, and the pattern of development in the vicinity of the site, I recommend that permission be granted for the following reason.

11.0 REASONS AND CONSIDERATIONS

The “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government (2005) indicate in Appendix 1 that seven years would be an appropriate period for a planning condition restricting the occupancy of rural houses. The subject house was constructed and occupied under planning register reference numbers 99/3053 and 02/2111, condition 1 of which restricted the occupancy of the house in perpetuity to the applicant, or to certain other persons by written agreement with the planning authority. Having regard to the time period that has elapsed since the construction and occupation of the house, approximately fourteen years, and the provisions of the said Guidelines and the provisions of the current Galway County Development Plan in particular policies RHO 3, and RHO 13 which require Section 47 agreements for a period of seven years, it is not considered reasonable that occupancy be further restricted. In the circumstances of the case, it is not considered appropriate to further restrict the occupancy of the dwelling. It is, therefore, considered that, subject to compliance with the conditions set out below, the proposed removal of the enurement clause and the development proposed for retention would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience, would not set a precedent for similar such development, and would not be contrary to the proper planning and sustainable development of the area.

12.0 CONDITIONS

- 1 (a) The development shall be retained 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.
 - (b) The development hereby permitted to be retained relates solely to the domestic shed as applied for.
 - (c) The shed shall not be used for human habitation and shall only be used for domestic storage for uses incidental to the dwellinghouse.

Reason: In the interest of clarity and to ensure that this permission only relates to those works proposed for retention in this application.

2. In all other regards, the development shall comply with the conditions attached to planning permission granted under planning register reference number 02/2111, with the exception of condition number 1 of that permission.

Reason: In the interest of clarity.

Angela Brereton,
Planning Inspector,
17th of June 2016