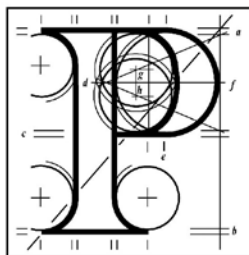


An Bord Pleanála



Inspector's Report

Development: Retention and completion of a dwelling house, treatment unit and all associated services previously granted under application reg. no. 04/5678 at Farnaun, Peterswell, Co. Galway.

Application

Planning authority: Galway County Council
Planning application reg. no. 15/1324
Applicant: Damien Egan
Type of application: Retention permission
Planning authority's decision: Grant, subject to 9 conditions

Appeal

Appellant: Damien Egan
Type of appeal: First party -v- Condition 2
Observers: None
Date of site inspection: 7th July 2016

Inspector: Hugh D. Morrison

Site

The site is located 7 km to the north east of Gort in the townland of Farnaun to the south of the village of Peterswell. This townland and this village lie on a local road, which is accessed off the N66 between Gort and Loughrea. The Slieve Aughtry Mountains lie to the east and the site lies within an area of undulating countryside that is partially forested. A cluster of dwelling houses lies to the south east.

The site itself is of regular shape and it rises at a gentle gradient from the local road to the north east. This site extends over an area of 0.246 hectares and it has been partially developed under permitted application 04/5678. Accordingly, the site has been dug out and the shell of a single storey dwelling house has been built to eaves level. At present the site is considerably overgrown and it is wet under foot.

Proposal

The proposal is to retain and complete the single storey dwelling house on the site along with a treatment unit and all associated services. This dwelling house would provide four bed accommodation with two beds in the roofspace. It would have a floorspace of 196 sq m. The proposed treatment unit would be accompanied by a raised polishing filter, both of which would be sited forward of the dwelling house. A French drain would be laid along the back of the site and down the south eastern boundary. The existing access point would be relocated to the easternmost corner of the site.

Planning authority's decision

Following receipt of further information, permission was granted subject to 9 conditions, including the following one, which is the subject of this appeal:

2. Use of the proposed house shall be restricted to use as a house by the applicant, applicant's family, heirs, executors and administrators or persons involved in agricultural or related activities, returning emigrants or those with an essential housing need in this rural area, unless otherwise agreed by the planning authority for a period of 7 years. The period of restriction shall have effect from the date of first occupation of the house by the approved occupant.

Within 3 months of commencement of the development the applicant/developer shall enter into a legal agreement with the planning authority (under the provisions of Section 47 of the Planning and Development Act 2000 – 2007) the purpose of which shall be to give effect to the above restriction.

The house shall not be occupied until an agreement embodying a provision to give effect to the above restriction(s) has been entered into with the planning authority pursuant to Section 47 of the Planning and Development Act 2000.

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

Technical reports

None

Grounds of appeal

The applicant has appealed condition 2 attached to the planning authority's draft permission on the following grounds:

- The site is located within an area of low economic activity and population decline. Thus, its designation as part of the GTPS area does not reflect these realities.
- The subject dwelling house was granted permission without an enurement condition. It was partially built under this permission before the downturn led to work ceasing on the same.
- Attention is drawn to permitted application reg. no. 15/131. Like the current application this one was for the retention and completion of a dwelling house in the GTPS area. The original permission had no enurement condition and so none was attached to this permission.
- Attention is also drawn to permitted application reg. no. 14/62. Like the current application this one, too, was for the retention and completion of a dwelling house in the GTPS area. The original permission had an enurement condition and so one was attached to this permission, only unlike the aforementioned condition 2 this condition refers to "first time occupier" rather than the applicant.
- The applicant did not demonstrate a housing need and so condition 2 should not have been attached to the draft permission.
- The partially constructed dwelling house on the site is an eyesore and a legacy of the economic downturn. The planning authority has an obligation to assist with remedying this situation.

Response

Awaited

Planning history

- 04/5678: Construction of a dwelling house, septic tank, percolation area, and entrance: Permitted on 31st December 2004 subject to 13 conditions, none of which are enurement ones.

Development Plan

The Galway County Development Plan 2015 – 2021 (CDP) is shown as lying within a rural area that is the subject of strong urban pressure, i.e. the area of the Galway Transportation and Planning Study (GTPS).

National planning guidelines

Sustainable Rural Housing

Assessment

1. The applicant has appealed condition 2 of the draft planning permission that the planning authority granted to his application. Under Section 139 of the Planning and Development Act, 2000 – 2016, the Board has the discretion to consider this appeal in isolation from a *de novo* assessment of the application as a whole. I have reviewed this application/appeal and I consider that the Board should exercise such discretion in this case.
2. Under the CDP, the site is located within the GTPS, which is composed of rural areas that are under strong urban pressure. Accordingly, applicants for one-off dwelling houses in the countryside are required to demonstrate that they have a rural generated, as distinct from an urban generated, housing need.
3. Under a request for further information, the planning authority raised with the applicant the aforementioned requirement. He responded by making the following points:
 - The previous planning application (04/5678) for the partially built dwelling house on the site was granted under an earlier CDP, which did not require that a rural housing need be demonstrated.
 - The site is located in Cappard ED, which experienced a decline in population between 2006 and 2011 and which is expected to show a further decline under the 2016 Census.
 - Employment opportunities are absent from the area, as farming is increasingly being replaced by forestry.
 - The partially built dwelling house needs to be completed to remove an eyesore.

The applicant thus did not demonstrate that he had a rural housing need.

4. The planning authority proceeded to grant permission subject to condition 2, which requires that either the applicant, his family, heirs, executors and administrators or persons involved in agricultural or related activities, or returning emigrants or those with an essential housing need in this rural area, use the dwelling house for the first 7 years. The reason for this condition is stated as being

“To ensure that development in the area in which the site is located is appropriately restricted.”

5. The applicant, in appealing condition 2, makes the following points:
 - He reiterates that the original permission was not subject to an equivalent condition and that, as he did not demonstrate a rural housing need, condition 2 should not have been attached.
 - While the locality of the site is located within the GTPS, its location therein is misplaced in the light of the population and employment trends cited above.
 - In view of the eyesore, cited above, there is an onus on the planning authority to grant permission.
6. The applicant also refers to the following two applications for comparable proposals to retain and complete partially built one-off dwelling houses in the countryside:
 - 15/131: The original permission had no enurement condition and so none was attached to the latest permission.
 - 14/62: The original permission had an enurement condition and so one was attached to the latest permission, only this condition refers to “first time occupier” rather than the applicant.
7. The planning authority has not responded to the applicant’s grounds of appeal.
8. The CDP states that the GTPS was adopted in 1999 and updated in 2003. The original permission for the site was granted permission on 31st December 2004, under the then current CDP, i.e. the Galway County Development Plan 2003 – 2009. The Sustainable Rural Housing Guidelines were introduced in April 2005 and they have influenced not only the subsequent CDPs, i.e. for the periods 2009 – 2015 and 2015 – 2021, but also the variation, denoted as 3, in the CDP for the period 2003 – 2009, which was adopted on 27th July 2006. Thus, a material change in the policy framework within which rural housing applications are to be considered has occurred since the said original permission.
9. The applicant challenges the appropriateness of the GTPS status of the site within the context of the surrounding locality. This question of appropriateness is one that touches on the overall approach of the CDP to rural housing and so I consider that, if it is to be addressed, then it should be at a county-wide level rather than on a case-by-case basis under individual planning applications.
10. The original permission was granted before the introduction of the Sustainable Rural Housing Guidelines and their subsequent influence on CDPs. The applicant insists that, as the original permission for the site was granted without an enurement condition, none should be attached now. In this respect, he draws attention to the above cited two comparable applications.

- In relation to the first of these applications, the original permission comprised an outline (01/4975) and detailed matters (05/2715) stages. Under the former stage, no enurement condition was attached. Under the detailed matters stage, one was attached, only to be removed by the Board (PL07.131558) on the basis that, against the backdrop of the outline permission, it was *ultra vires*. The extant permission (15/131), likewise, is not subject to an enurement condition.
- In relation to the second of these applications, the original permission (08/2393) was subject to an enurement condition that referred to “first occupier” rather than the applicant and the extant permission (14/62) is subject to a similar condition that refers to “first time occupier”.

The decisions on these two applications follow the pattern set by their predecessors.

11. The applicant also states that, as he did not demonstrate a rural housing need, he should not have been referred to in condition 2. Furthermore, he contends that there is an onus upon the regulatory system to ensure that the partially built dwelling house is completed thereby removing an eyesore.
12. I note that the GTPS was applicable when the original permission for the site was granted. I note, too, that the Sustainable Rural Housing Guidelines introduced a material change in rural housing policy that came after this permission. The comparable applications cited by the applicant illustrate that the planning authority has granted permissions that accord with original permissions and that *prima facie* the permission granted to the applicant’s site is inconsistent with this pattern.
13. I consider that in the case of applications (01/4975 and 05/2715) the former outline permission clearly set the context for the detailed matters permission. Between this original permission and the subsequent application 15/131 the said permission lapsed and the aforementioned Guidelines were introduced.
14. In the case of application 08/2393 the attachment of an enurement condition was made under the varied CDP for the period 2003 – 2009 and this condition was simply replicated under the extant permission granted to application 14/62.
15. The original permission for the applicant’s partially completed dwelling house was granted before rather than after the Sustainable Rural Housing Guidelines variation in the CDP. Thus, the development of this dwelling house proceeded on the basis that it would not be the subject of an enurement condition. Completion did not occur, due to the economic downturn, and the applicant now simply wishes to achieve this objective. I consider that, as the shell of the dwelling house is insitu, the proper planning and sustainable development of the area would be served by its speedy completion. The introduction of an enurement condition now would be contrary to the basis upon which development has proceeded to date and it could have the unintended effect of delaying completion. Thus, in these circumstances, I do not consider an enurement

condition should be attached, as might otherwise have been anticipated under the CDP, and so I conclude that condition 2 should be omitted.

Recommendation

I recommend that the planning authority be directed to omit condition 2 from the draft permission granted to application 15/1324.

Reasons and considerations

It is considered that, in view of the construction that has occurred on-site under the planning permission granted to application 04/5678 which pre-dates the Sustainable Rural Housing Guidelines and their incorporation into successive Galway County Development Plans, to introduce an enurement condition now for the first time into the permission authorising the retention and completion of this dwelling house would be unreasonable. Furthermore, such a condition could delay the completion of this dwelling house and so be seriously injurious to the visual amenities of the area. The omission of the enuement condition from the draft permission granted to application 15/1324 would thus accord with the proper planning and sustainable development of the area.

Hugh D. Morrison

Inspector

26th July 2016