

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL03.246560

Development: Permission for retention of changes to permission reg.ref.P12/397: 1. Alterations of roof profile and ridge height; 2. Alterations of ground floor plan; 3. Alterations of elevations.

Address: Clonfadda, Killaloe, Co. Clare

Planning Application

Planning Authority: Clare County Council
Planning Authority Reg. Ref.: P16/100
Applicant: Brendan Cleary and Eithne Connelly
Planning Authority Decision: Grant permission subject to 8no. conditions

Planning Appeal

Appellant(s): Breffni & Ursula Freyne
Type of Appeal: Third party appeal against decision
Observers: None
Date of inspection: 01/07/16

Inspector: John Desmond

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The application site is located in southwest County Clare in the townland of Clonfadda, c.17km northeast of centre of Limerick City, c.2.5km southwest of Killaloe / Ballina and c.4.25km northeast of the village of O'Briensbridge and about the same distance east-northeast of Bridgetown. The River Shannon c.900m to the southeast of the site.
- 1.2 The area is rural but there is a significant proliferation of one-off type housing distributed at almost suburban densities along the rural road network, and is particularly prevalent to the north of the site on the local access road. There is an existing dwelling adjacent the south and another is indicated as permitted adjacent the north of the site. The 80kph limit applies to the access road, although the condition of the network is generally narrow, of poor alignment and condition. The local road has recently been realigned adjacent the site omitting a bend, with the site accessing indirectly onto the realigned section via the original road. The regional road, R463, c.430m to the southeast, is of reasonable alignment and condition.
- 1.3 The area of the application site is stated as 0.2ha. A split-level dwelling has been constructed on site and would appear to be occupied although it is not yet fully complete. The site slopes downwards generally from west to east from the public road, but the original slope of the site has been obscured by site development works which have entailed significant excavation and infill works. Whilst much of the original roadside boundary hedgerow is still in place, there are no mature trees within, bounding or in the vicinity of the site and the other site boundaries are demarcated by post and wire fencing, or, in the case of the southern boundary, by timber post and rail fencing. New, immature planting has been carried out in the vicinity of the site's southern boundary.
- 1.4 The nearest Natura 2000 sites include the Lower River Shannon SAC (ref.002165) to the east (c.500m at the nearest point to the southeast).

2.0 PROPOSED DEVELOPMENT

The development proposed for **RETENTION** comprises the following alterations to permission reg.ref.P12/397:

1. Alterations of roof profile and ridge height;
2. Alterations of ground floor plan;
3. Alterations of elevations.

3.0 RELEVANT PLANNING HISTORY.

On site –

Reg.ref.P12/397: Planning permission **GRANTED** by Clare County Council (14/09/12) to Eithne Connolly and Brendan Cleary to construct a new two-storey dwelling with a new vehicle entrance and ancillary site works at this site at Clonfadda, Killaloe, Co. Clare.

In the vicinity:

Reg.ref.P10/945: Permission **GRANTED** by Clare County Council (21/01/11) to Martin Lynch to **RETAIN** dwelling house as constructed, attached garage and services area as constructed, existing site boundaries and entrance on site as constructed and associated site works on the adjacent site to the south of the current appeal site.

Reg.Ref.P16/470: Application by Enda and Rebecca Gunning for the construction of an entrance, split level 2 storey dwelling house with attached garage, septic tank and percolation area and all associated site works on the site adjacent, but one, to the south of the current appeal site. **DECISION PENDING.**

Reg.Ref.P13/183: Permission **GRANTED** by Clare County Council (07/06/13) to Michael Coughlan for extension of duration for the construction of a split level dwelling house, proprietary treatment system, entrance and ancillary works (Planning Ref. No. 07-3032 refers) on the adjacent site to the north of the current appeal site.

4.0 PLANNING AUTHORITY DECISION

Decision to **GRANT** permission subject to 4no. standard conditions

4.1 Planning and technical reports

Planning Officer– The report of 12/04/16 is consistent with the decision of the Planning Authority.

4.2 Observations

2no. observations were received from a Breffni and Ursula Freyne (the third party appellants, on 22/03/16) and An Taisce (02/03/16). The main points raised are repeated in the appeal. Additional points raised:

- The application should be considered 'de novo'.

- Condition no.6 of permission reg.ref.12/397 to be noted.
- Visual and landscape impact.

5.0 GROUNDS OF APPEAL

Breffni and Ursula Freyne c/o Brendan McGrath (09/05/16) – The main grounds of appeal may be summarised as follows:

Increase in roof ridge height:

- 1.652m higher than third party appellants' home (as measured by chartered engineer.
- Much Bulkier
- That the originally proposed roof ridge height was similar to that of the third party appellants' dwelling was a determining factor in the grant of permission reg.ref.12/397
- Increased mezzanine accommodation.

Water supply:

- House built without the applicant demonstrating availability of adequate water supply as required by condition no.14 of the parent permission.
- The site is in the middle of three other sites dependent on well water supply.
- The proposed well has been relocated to the front of the house c.10m from well proposed to accommodate the permitted development on the site to the north.
- The site characterisation assessment to the parent application noted the site was underlain by bedrock classified as poor aquifer, generally unproductive except for local zones, and there are water shortages in summer months.

Overlooking:

- Large living-room window, 1.4m wider than permitted will overlook side and rear of the third party appellants' house.
- The window is also closer than permitted, within 23m from their dining room window and 27m from the master bedroom window.
- Although in excess of the 22m standards referred to in the SRDG (2009), the offending window is a living room window, the existing house has an established residential amenity without overlooking and the overlooking would affect several parts of the appellants' property.

Inadequate documentation:

- Height of house not shown correctly on contiguous elevation drawings 01 of 1110-PL-0053.
- Enlarged mezzanine not shown.
- Three (northernmost) roof lights on rear elevation not shown correctly.
- Gross floor area of building not stated at Q.12 of application form.

Decision of County Council:

- Failed to consider impact of increased height of dwelling as viewed from Scenic Route to south.
- Failed to adequately consider additional floor area of mezzanine and should have requested further information in this regard.
- Did not consider water supply issue.
- Disagrees with Planning Officer's opinion that the omission of the terrace would reduce overlooking.

In the event of a decision to grant permission, conditions addressing the following are suggested:

- Requiring provision of a permanent screen of opaque material to block view from south-facing living-room window.
- De-exempting bed-and-breakfast accommodation.
- No surface to flow onto neighbouring properties.
- Landscaping plan to be submitted for approval of the local authority.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response (02/06/16)

- There is sufficient distance between the south-facing window and the party boundary.
- The omission of the original south-facing terrace provides for greater privacy than originally permitted.
- A window was previously granted at this location.
- The increase in height is consequent of the change in the roof profile and does not affect the height of the fenestration relation to the surrounding ground / dwelling.
- The Planning Authority has no objection to proposed amendments.

6.2 Applicant (08/06/16)

Alterations to roof design

- Increase of roof ridge height by 1.05m above permitted and above neighbouring dwelling is slight.

- Increased height is not easily distinguishable in reality.
- Increased height was incorporated more for the reason of aesthetics in creating a simpler roof form in the land scape than for creating a larger internal space.
- The internal mezzanine space has been slightly reduced from the initial application, not increased.

Water supply

- No issues with water quality or availability of supply were found on site.
- The location of the well was altered due to accessibility of the drilling rig; no issues with supply failure were reported and the water table was encountered, as expected, as 73m depth.

Elevation alterations

- South facing terrace has been omitted to eliminated potential for overlooking of the neighbouring property.
- The terraced area, which was within the original roof perimeter has been incorporated into the internal area of the ground floor (comparison overlay drawings 1110-PL-0054 enclosed).
- These amendments improve the situation of the neighbouring house over that granted originally.
- 22m standard exceeded.

Specific issues:

- Drawing 1110-PL0053 correctly shows house height.
- Mezzanine is not over the greater portion of house, but was original permitted (see 1110-PL-0055).
- Roof light positions were altered by less than 500mm vertically from that shown on application drawings and may be considered substantially compliant.

Other

- Southern gable wall extended eastwards by as much as the extension eastwards of the east end of the building.
- South facing window to lower floor bedroom has also been removed, reducing overlooking.
- Screen planting currently being undertaken compliant with condition no.12 will provide screening between the two sites.

6.3 Planning Authority response (24/06/16)

No further comment.

6.4 Third Party Appellant (27/06/16) – the main points of the response may be summarised as follows:

Alterations to roof

- Two chartered engineers engaged to check roof heights (the first using standard survey equipment, the second using calibrated and certified GPS equipment) found the house to be 1.6m – 1.652m higher than the appellants' house.
- The JCA data contains significant inconsistencies. Drawing 110-PL-0053 shows a difference between ridge height and eaves of 4m (100.750-96.750) and drawing 110-PL-0052 shows a difference of 4.45m, (100.75-96.300).
- The height difference is very clear from the east / rear and from approach from the north on the local road / Lough Derg Way (supporting photos contained in submission).
- Regardless of whether the change in roof profile was for aesthetic reasons, it results in a larger and bulkier building, with an increase in gross floor area of 26% (from 217-sq.m or 273.5-sq.m) over that granted under permission reg.ref.12/397.
- The gross floor area (excluding car port) is 56% larger than the stated size (175-sq.m) under permission 12/397.
- It is evident from the planning history that ridge height has been a critical issue on this site and that a permission would not have been granted for a dwelling significantly higher than existing adjacent dwellings – application reg.ref.11/858 was withdrawn following further information request which included concern that the ridge height would result in that dwelling being visually dominant in the landscape; under reg.ref.12/397 the planning officer report of 08/08/16 stated '*I note that the ridge height of the proposed dwelling is to be similar to that of the existing dwelling to the south and the house to the north as permitted under P07-3032. In this respect, I consider that the proposed dwelling is considered acceptable in this context.*'
- The asymmetrical roof design has never been an issue.

Water supply

- No evidence that tests and assessments required by condition no.14 of the parent permission were carried out.
- No reason for well to be located.
- Relocation of well may have implications for the cone of depression, water and water quality.

Alterations to elevations

- There has been an acceptance that separation distance in excess of 22m is required to protect established residential amenities.
- Less than 20m between window in front elevation to living room window in appellants' home.
- The appellants were not aware of the original application decision at the time of its making and therefore were not in a position to appeal it and the issue of the original terrace. The current application decision has enabled them to appeal on the issue of overlooking.

Other issues

- No mezzanine floor plan has been submitted to enable determination of the floor area.
- The applicant does not state floor area of dwelling.
- Overlooking from ground floor bedroom window is not as significant an issue as that from the living room window at higher level.
- Screen planting would not mitigate impact of serious building design fault. Deciduous species would provide screening for only half the year and would take several years to become effective.
- The subject alterations are no minor.

Clare County Council

- Applicant should be assessed on its own merits, not based on a comparison to reg.ref.12/397.
- Decision to grant permission under reg.ref.12/397 was a bad decision.

7.0 POLICY CONTEXT

Clare County Development Plan 2011-2017

Relevant Sections:

Chapter 19 – Design and the Built Environment: Section 19.4.3 Rural Design

REFERENCE DOCUMENTS

'Appropriate Assessment of Plans and Projects in Irelands, Guidelines for Planning Authorities' (DoEH&LG, 2009)

'County Clare Rural House Design Guide, Second Edition' (Clare County Council, 2005)

8.0 ASSESSMENT

Having inspected the site and reviewed the file documents, I consider that the issues raised by this appeal can be assessed under the following broad headings:

- Overlooking
- Design / visual impact
- Water supply
- Other issues
- Appropriate Assessment

8.1.0 Overlooking

8.1.1 The split-level residential dwelling previously granted permission under reg.ref.P12/397 included an extensive external terrace (c.2.5m X 7.5m) on its southern side at upper floor level, which included a flights of steps to a patio area south of the terrace. The said terrace, which wrapped around to extend along most of the dwelling's eastern elevation, was opened onto by, and overlooked by extensive glazing from the living room area. The said permitted terrace was within 9m of the party boundary and, the shortest distance between the terrace and the existing neighbouring dwelling to the south was c.18m (drawings 1110-PL-0005 dated 26/06/12) where there is a large corner window to a living area.

8.1.2 The dwelling as constructed omits the southern terrace and steps. The living room area has been extended in an eastern and southern direction, however the extent of glazing exposed to the southern elevation has been maintained at 3.5m in length and its height appears unaltered to that permitted although it has been set forward c.500mm closer to the party boundary (drawing 1110-PL-0050, dated 17/02/16). The revisions unarguably significantly reduce the level of overlooking of the neighbouring property compared to that originally permitted.

8.1.3 On inspecting the site it was apparent that the upper floor living room window commands an unobstructed view over the neighbouring property to the south. In the rural context of the site, where would have reasonable expectations of increased privacy / lower levels of overlooking, I consider the level of overlooking of the neighbouring property to be somewhat excessive and unnecessary. However, the level of overlooking is significantly reduced compared to the original permission and I am satisfied that there is no direct overlooking between opposing first floor windows due to the separation distance (>23m) and angle of view between same (see drawing 1110-PL-0055 received 08/06/16). Once the screen planting currently undertaken on

site has matured, the level of overlooking of the private open space of the said neighbouring property will be mitigated to a reasonable degree.

8.2.0 Design / visual impact

- 8.2.1 The principle changes are increase in roof ridge height by 1.05m (from +99.700 to +100.750), altered roof profile from asymmetrical to symmetrical apex design, increased internal floor area at upper floor level through incorporation of permitted terrace areas, increased internal lower floor area and changes to fenestration pattern at lower and upper floor levels and at roof level.
- 8.2.2 Having inspected the site and surrounding area, and having regard to the originally permitted development on the site, in addition to the existing and permitted developments along this local road, I am satisfied that the increased visual impact of the development, as constructed, is not such as to warrant a refusal and will not materially increase the visual impact on the designated scenic route (regional road) to the east. The visual impact of the development will further lessen as screen planting matures on site.

8.3.0 Water supply

- 8.3.1 The principle of providing a dwelling with well water supply was accepted on this site under the parent permission. The third party appellants points out that there is no evidence that the applicant has complied with the requirements of condition no.14 of the parent permission, which provided that no development shall commence on the house construction under the Planning Authority is satisfied that the proposed well can provide an adequate water supply for the dwelling with respect to water quality and quantity, through the submission of specified water yield and quality results for agreement of the Planning Authority. Furthermore, the appellant is concerned that the relocated well position will adversely affect neighbouring supplies including that permitted on the neighbouring site to the north, separated therefrom by only c.10m.
- 8.3.2 The applicant has responded that no issues were found with water quality or availability of supply on site, with the water table was encountered, as expected, as 73m depth. The location of the well was altered due to accessibility of the drilling rig.
- 8.3.3 The Planning Authority raised no concern regarding water supply and does not address the third party concerns in its response to the appeal. The report of the Planning Officer did not consider the relocation of the well to be

material. Assuming the applicant did not attain the agreement of the Planning Authority on details of water supply prior to commencement, it is not possible to comply with condition no.14 at this stage given that development has commenced. It would be appropriate to attach an amended version of the subject condition to address this issue.

8.4.0 Other issues

8.4.1 The Planning Authority did not attach a section 48 development contribution condition. The Development Contribution Scheme 2013-2017, adopted September 2013, is the operative scheme. For the purposes of the Scheme and given that a contribution condition was attached to the parent permission, the subject development may be considered a residential extension. There would appear to be no requirement for contributions for extensions of dwelling which are not connected to water supply or wastewater services under the Scheme.

8.5.0 Appropriate Assessment

8.5.1 Having regard to the small scale and nature of the proposed development, comprising alterations to roof height and design, a relatively minor increase in floor area, elevational changes and the relocation of the proposed well water supply c.14m within the site, and the location of the site outside and at a distance (c.500km) from any Natura 2000 site (Lower River Shannon SAC (ref.002165), 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.

9.0 CONCLUSIONS AND RECOMMENDATION

9.1 The development proposed for retention would not seriously injure the amenities of property in the vicinity and would not significantly adversely alter the visual impact of the development on this site over and above that previously permitted. I therefore recommend that permission be granted.

REASONS AND CONSIDERATIONS

Having regard to the nature and scale of the alterations to permitted development reg.ref.12/397 proposed for retention, to the site context relative to surrounding developments and to designated amenities, it is considered that the proposed development would not seriously injure the residential amenities or the visually amenities of the area and would not be contrary to

the proper planning and sustainable development of the area subject to compliance with the conditions set out below.

Conditions

1. The 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 within the time period set out in that condition and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority within 6 months of the date of this order.

Reason: To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

- 3 (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.

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

- 4 (a) All existing trees and hedgerows along the roadside boundary shall be retained. Any gaps in the said boundary shall be supplemented with additional tree and hedgerow / shrub planting.

(b) The southern, eastern and northern site boundaries shall be planted with a line trees and hedgerow/shrub species.

(c) All trees, hedgerows and shrubs required under parts (a) and (b) of this condition shall comprise broadleaf, deciduous native Irish species unless otherwise agreed with the Planning Authority.

(d) The planting required under this condition shall be carried out within the first planting season following the date of this order and any planting that fails within two years of the planting shall be replaced within the following planting season.

Reason: In the interest of protecting the visual amenity of this rural area.

John Desmond
Planning Inspector
11/08/16