



An  
Bord  
Pleanála

## Inspector's Report PL16. 247736

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<b>Development</b>	House and wastewater treatment system
<b>Location</b>	Carn (Fowler), Belmullet, Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	16/751
<b>Applicants</b>	Melissa Nallen and John Lavery
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	Third Party vs. grant
<b>Appellant</b>	DAHRRGA
<b>Observers</b>	None
<b>Date of Site Inspection</b>	28 <sup>th</sup> February 2017
<b>Inspector</b>	Stephen J. O'Sullivan

## 1.0 Site Location and Description

1.1. The site is in a rural area c2km west of Belmullet, Mayo. It has a stated area of 0.53ha and consists of part of a field under grass. The roadside, northern boundary of the site is marked by a ditch and a line of gorse. The eastern boundary is undefined and the southern one is along a stream. The western boundary of the field has a stone wall with an intermittent gorse inside it. A line has been marked by wooden posts and rope to the east of the gorse which corresponds to the western boundary of the appeal site. The landscape in the area is open with little screening vegetation. The land rises steadily from the shores of Blacksod Bay c550m to the south-east, reaching an elevation of just over 20m OD on the site. The land to the south-west is higher, rising to 41m OD. A large two-storey house, known as Carn House, stands c220m to the west of the site. It appears to date from the middle of the 19<sup>th</sup> century. Its front elevation is oriented to the bay and the appeal site. Its driveway runs across the field immediately to the west of the appeal site.

## 2.0 Proposed Development

2.1. It is proposed to build a house on the site with a stated floor area of 480m<sup>2</sup> and a roof ridge height of 8.68m. There would be a detached garage of 86m<sup>2</sup>. The house would be served by an effluent treatment system and a percolation area constructed from imported soils to which effluent would be pumped.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission subject to 15 conditions.

Condition no. 1 referred to the documentation submitted with the application.

Condition no. 2 required the house to be moved from its proposed location on the site.

Condition no. 12 required to maintenance of existing trees and hedges on the site, except where required to allow construction, and the implementation of the submitted landscape plan.

Condition no. 15 restricted occupancy of the house for 5 years from its completion.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The report from the Area planner recommended that further information be sought regarding the impact on the setting of the protected structure at Carn House; the need for the separate internal living space; the level of soil importation required for polishing filter; and confirmation that the assessment was undertaken by a suitably qualified person.

A report from the Senior Planner stated that a strong medical need was established at a pre-planning meeting. There is a valid permission for a house and the application is essentially for a change of house type. Relocating the house on the site will reduce its visual impact on the view to Carn House. The separate living unit is required by the nature of the medical need. Although the septic tank and polishing filter would be in a different place, the soil characteristics are similar throughout the site and the requirement for soil importation remains the same as before. The Natura Impact Statement for P11/404 was prepared by a suitably competent person. The NIS covers the same issues and reaches the same conclusions as before so this item of FI is of a minor technical nature which does not affect the outcome of the application. A grant of permission was recommended.

### **3.3. Prescribed Bodies**

The DAHRRGA made a submission which stated that the site was within an SPA designated for the protection of Corncrake. The proposed development would have potential impact due to direct loss of Corncrake breeding habitats or damage to adjacent habitats due to inappropriate site preparation or construction, or the deterioration of water quality due to surface water runoff during construction or pollution/eutrophication caused by the wastewater treatment system. The need for an appropriate assessment needs to be required.

## 4.0 Planning History

Reg. Ref. P11/404 – the planning authority granted permission on 5<sup>th</sup> June 2012 for a house and septic tank on a site that was similar to the current appeal site.

Condition no. 13 required landscaping with a cover area as per measure 1 of the Corncrake Farm Scheme in accordance with a plan submitted on 7<sup>th</sup> November 2011.

## 5.0 Policy Context

### 5.1. Guidelines for Planning Authorities on Sustainable Rural Housing, 2005

The site is in a rural area identified as having a clustered settlement pattern, where the key objective is to support a vibrant rural population.

### 5.2. Development Plan

The Mayo County Development Plan 2014-2020 applies. The site is in a rural area identified as being structurally weak where permanent housing needs will be facilitated. It is in Landscape Area 2 – the lowland coastal zone – where rural dwellings have a medium to low potential to create adverse impacts. Carn House at the west of the site is a protected structure.

### 5.3. Natural Heritage Designations

The site is in the SPA for the Mullet Peninsula sitecode 004227

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The site is within the Mullet Peninsula SPA that has been selected for the conservation of the corncrake. The proposed development has the potential to cause adverse effects on the Corncrake and its habitat, particularly its breeding habitat. It would cause a direct loss of habitat as well as further encroachment and fragmentation of the potential habitat in the SPA.

- A report was submitted with this application that is referred to as a Natura Impact Statement Report. It is the same report that was submitted with the application for permission under 11/404. Further information was sought by the planning authority for that planning application after that report was submitted which formed the basis for condition no. 13 attached to the resulting permission.
- The issues raised in the department's submission to the planning authority on this application which were not properly addressed. The FI on the previous application included a landscape plan with measures to protect corncrake habitat that were not specified in the initial report on the previous application or that submitted for this one. Therefore the crucial condition no. 13 on the previous permission has not been repeated.
- It has not been shown that the council has completed an appropriate assessment with respect to the SPA and its conservation objective, so it cannot be excluded on the basis on the information before the board, that adverse effects on the integrity of the site will result.
- The SPA has been protected since 4<sup>th</sup> July 2011. Permission for a house was granted on the site on 5<sup>th</sup> June 2012. So the department does not object to the provision of a house on the site as permission for one already exists. However it is objecting to a grant of permission under this application due to the omission of critical measures required under condition no. 13 of the previous permission

## 6.2. Applicant Response

- The applicants have no objection to the condition 13 that was attached to the previous permission on the site. The site plan for the current application does not extend to the existing stone wall to the north, but no development will take place within 15m of that wall. A stock proof fence is proposed 6m from it, with the house 20m from it. The proposed garage would be 10m from the wall but it can be moved if required. The applicant would be happy to comply with any conditions regarding screening of the site.

### 6.3. Planning Authority Response

- The proposed development is essentially for a change of house type. The appropriate assessment carried out by the county council used the 'Natura Impact Statement Report for Site at Carn (Fowler) Belmullet' and the 'Report on the Mullet Peninsula SPA for Site at Carn (Fowler) Belmullet' in exactly the same way as both the reports submitted for the previous application. The fact that the latter report was not incorporated physically into the NIS does not negate its use in carrying out appropriate assessment, particularly when the same two documents had already been used in the appropriate assessment for P11/404.
- Section 6 of the 'Report on the Mullet Peninsula SPA for Site at Carn (Fowler) Belmullet' indicates that the applicant is willing to provide a 15m wide 'cover area' along the western boundary of the site. This was incorporated into the planning authority's decision by condition no. 1, so restated condition no. 13 of the previous permission would have been superfluous.
- It is noted that a strip of land c5m wide in the cover area shown for the previous permission is not shown on the site of the current application. The council understands that this area is within the control of the applicant. Condition no. 2 of the council's decision would result in the further setback of the proposed house from the boundary with Carn House. For the avoidance of doubt this condition should specify that a 15m 'cover area' should be reserved for measure 1 of the Corncrake Farm Plan in the same way as condition no. 13 of P11/404.
- The appeal is somewhat contradictory in that it states no objection to the house yet appealed the decision in its entirety rather than simply condition no. 12 due to its lack of specificity. 15m of cover area can be provided within the site even if the other land is not in the control of the applicant.

## 7.0 Assessment

### 7.1. Appropriate Assessment

7.1.1. The proposed development involves building a very large house and wastewater treatment system on previously undeveloped land within the boundaries of the SPA for the Mullet Peninsula SPA. It would therefore be likely to have significant effects on that Natura 2000 site. An appropriate assessment of its implications for that site in view of the site's conservation objective is therefore required, and permission may not be granted unless the board ascertains that the proposed development would not adversely affect the integrity of the site in light of the conclusions of that assessment.

7.1.2. The conservation objective for the SPA is to maintain or restore the favourable conservation condition of the following species-

A122 Corncrake *Crex Crex*.

7.1.3. A Natura Impact Statement was submitted with the application. It does not refer to the SPA in which the site is located or to Corncrake. It gives no indication that it was prepared with any particular expertise on that species. The statement is not adequate to inform an appropriate assessment of the proposed development. Another document was submitted with the application entitled 'Report on the Mullet Peninsula SPA' It concludes that the proposed development would not adversely affect corncrakes or their habitat. However this document is not adequate to inform an appropriate assessment of the proposed development either. It does not indicate that it was prepared with an particular expertise with regard to corncrake. It has a weak empirical base, referring to a report from 2011 to conclude that corncrake have not been recorded on the site although they were heard on the adjoining land. This information is not adequate to demonstrate that corncrake do not occur on the appeal site or in its vicinity, particularly when the report does not attempt to describe the ecological function of the various parts on the SPA in supporting the corncrake population or the threats to it. The report refers to a measure to preserve cover for corncrake along the western boundary of the site required under the previous planning permission. The proposed development does not include such a measure. Therefore the information before the board would not support a conclusion that the proposed development would not adversely affect the integrity of a Natura 2000 site.

7.1.4. It may be the case that the implementation of a cover strip in the manner required by condition no. 13 of the previous grant of permission would be sufficient to ensure that the building a house here would not affect the objective of the SPA to restore or maintain the favourable conservation condition of the corncrake. However information has not been provided that would support this conclusion. The planning authority relied on its previous consideration in relation to P11/404 in this regard, treating the development now proposed as essentially a change of house type. However what is now proposed is significantly different from what was previously authorised. It would be a much bigger house on a site with different boundaries, and with a garage and driveway well within the cover area required to be kept free of development by condition no. 13 of the previous permission. The appropriate period within which the development could be carried out if this application was granted would also be largely outside that of the previous permission, which expires in June of this year. The obligations under the Habitats Directive with respect to this application have not been discharged by the previous grant of permission by the planning authority under P11/404, therefore.

7.1.5. Furthermore, it is by no means clear that a similar requirement as that set out in condition no. 13 of P11/404 could be imposed by a condition attached to a permission issued on foot of the current application. A large part of the required land is outside the application site and the applicants have not asserted that they have the control of that land that would be required to comply with a condition under section 34(4)(a) of the Planning and Development Act 2000, as amended. The application form states that the applicants do not own the site, but are merely prospective purchasers, so there is no reason to assume that they would have any control over those parts of the same field that are outside the site. Compliance with the requirement would also require significant alterations to the proposed development, as a substantial part of the proposed works would be within the previously protected cover area. Furthermore the text of condition 13 of P11/404 refers to measure 1 of the Corncrake Farm Plan Scheme. Information on that scheme has not been presented in the course of the application or appeal so it cannot be ascertained precisely whether any specific requirements that might be imposed at this stage would actually correspond with those previously imposed.



## 7.2. Policy

- 7.2.1. Neither the sustainable rural housing guidelines nor the county development plan place any general restriction on the development of houses in this rural area. It is noted that the report of the council's Senior Planner referred to a medical need. However there is no requirement to demonstrate need to justify permission for a house in this area, and if the board were minded to grant one than an occupancy condition would be unnecessary.

## 7.3. Impact on the character of the area

- 7.3.1. The proposed house is large, with 480m<sup>2</sup> of floorspace and a garage with another 86m<sup>2</sup>. While the accommodation would be provided on a single storey, a pitched roof would have a span of more than 12m and would have a ridge height of 8.68m, which would be remarkably high for a single storey house. It would be located in an open landscape with extensive views and little screening vegetation or topography. The proposed development would therefore have a significant visual impact. The layout of the house around a courtyard would mitigate this impact to a certain extent, as would the design details. Planting is also proposed on the site's boundaries. This is unlikely to provide much screening, given the growing conditions demonstrated by the absence of substantial hedges or trees in the area. The residual visual impact of the house might be considered acceptable in relation to the general character of this rural area. However it would be near the protected structure at Carn House. The design of the authorised house reflected that of Carn House in a way that the proposed house would not. The front elevation of Carn House is oriented to face down the slope to the bay. The proposed house would be situated in that line. Its substantial visual impact would therefore interfere with the relationship of the protected structure with the landscape around it, and would thus seriously injure its setting.

## 7.4. Other issues

- 7.4.1. The site suitability assessment indicated that there was a depth of unsaturated soil on the site of 1.35m with a t-value of 42. This site would therefore be suitable for the

treatment and disposal of domestic effluent in accordance with the 2009 Code of Practice issued by the EPA.

- 7.4.2. The road access to the site would be adequate to cater for the traffic that would be generated by the proposed house.

## 8.0 Recommendation

- 8.1. I recommend that permission be refused for the following reasons.

## 9.0 Reasons

1. The proposed development would involve substantial works within the Special Protection Area (SPA) for the Mullet Peninsula sitecode 004427 and so would be likely to have significant effects upon it. Having regard to the deficiencies in the information submitted in connection with the applicant and in response to the appeal, and to the failure of the proposed development to provide a cover area for Corncrake in keeping with the requirements of the previous permission P11/404, it cannot be ascertained that the proposed development would not adversely affect the integrity of the SPA for the Mullet Peninsula.
2. The proposed house would be a large structure in an open rural landscape in front of the main elevation of the protected structure at Carn House. Due to its size and situation, it would interfere with the relationship between Carn House and surrounding landscape and would therefore seriously injure the setting of that protected structure.

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Stephen J. O'Sullivan  
Planning Inspector

8<sup>th</sup> March 2017