



An
Bord
Pleanála

Inspector's Report PL16. 247757

Development	Alterations to house including a new wastewater treatment system
Location	Dooega, Achill, Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	16/756
Applicant	Mary O'Connell
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party vs. Refusal
Appellant	Mary O'Connell
Observer	None
Date of Site Inspection	28 th February 2017
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site has a stated area of 0.3075ha. It is in a rural area on Achill within 200m of the coast. It has c50m of frontage onto a county road c3m wide. The area is characterised by a clustered pattern of settlement, with a house across the road from the site and two more to its north. The site is occupied by the remains of a house with a stated area of 48m², and an attached shed of 25m². Part of the roof has collapsed, and the door and window openings are boarded up. The site slopes down from the road. The ground on the site appears to have been subject to operations. At the time of inspection it was waterlogged and rushes were growing upon it. There is a ditch along the northern site boundary. A stream was running along it with a continuous flow of water over a rocky bed.

2.0 Proposed Development

2.1. It is proposed to demolish the shed on the site and 15m² of the cottage and to build a new extension with a floor area of 170m². The extension would have accommodation on two storeys and would have a roof ridge height of 6.8m. The outfall from an existing septic tank would be diverted to a new effluent treatment unit and constructed percolation area.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for one reason which stated that it did not consider the site suitable for the disposal of wastewater due to the high water table on the site and a discrepancy between the site suitability assessment and what was observed on the site on inspection.

3.2. Planning Authority Reports

3.2.1. Planning Reports

There is a dwelling on the site. The residential use associated with the building is long since expired and from a landuse perspective the site is a greenfield one. The

site was wet underfoot and three trial holes had water 100mm from the surface indicating that the site would not be hydraulically capable of receiving waste water and hence does not comply with the minimum requirements of the EPA's code of practice. A refusal of permission was recommended.

4.0 Planning History

No previous application was cited by the parties.

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. Objective AH-10 is to promote the sympathetic maintenance and re-use of vernacular built heritage and to encourage the retention of original fabric such as windows, doors, renders, pub/shop-fronts, roof coverings and interiors etc. Section 20.2.4 of volume 2 of the plan states –

Where it is proposed to extend/renovate a structure with an existing septic tank system, the applicant will be required to demonstrate to the satisfaction of the planning authority that the existing septic tank is in working order and is suitable for the proposed development. This shall be by way of a report carried out by a suitably qualified person (as above) with professional indemnity insurance. The planning authority may require upgrades to existing septic tank systems to facilitate the proposed development or require relocation of septic tank systems where they are not located on the proposed site. If, arising from a report referred to above, a site suitability assessment is required, the assessment shall be carried out and certified

by a suitably qualified person (i.e. the holder of an EPA FETAC Certificate or equivalent

5.3. **Natural Heritage Designations**

The Keel Machair/Menaun Cliffs SAC is c325m south-west of the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- The applicant wishes to renovate and extend her cottage to be able to return to her family home and native village of Dooega. The cottage dates from the 1880s and has been owned by the same family since. It was occupied until the 1980s and remained habitable until 2015 when a severe storm damaged the roof, part of which then had to be removed. A photo from Google in 2009 shows the intact roof. The cottage is served by an old septic tank with a discharge point that predates planning and environmental legislation. An invasive species, Wild Rhubarb was removed from the site prior to the making of the application in May 2016 which required extensive excavation.
- The planning authority were wrong to conclude that residential use is not established on the site. The applicant has maintained the cottage since its last occupation with the intention that it remain a house. The applicant moved swiftly after the damage to the roof to prepare a planning application but the planning authority incorrectly deemed it to be invalid in October 2015. The structure was never used for any other purpose. The cottage and the septic tank retain their 'active/alive' planning status since pre1963 which substantiates the legal correctness of the description of the current application and ensures that section 6.6 of the EPA code of practice is applicable.
- The scale and design of the proposed extension is in keeping with the rural housing design guidelines issued by the council and objective AH-10 of the development plan to promote re-use of vernacular built heritage. First floor accommodation is the established pattern of development in the area. Removing the part of the cottage closest to the road would facilitate road

improvements. The development would not detract from the visual amenities of the area.

- The area is structurally weak and has suffered population decline, which the proposed development would help to address.
- An invasive species, Wild Rhurarb was removed from the site prior to the making of the application in April 2016 which required extensive excavation. This species does not grow on waterlogged ground. Trial holes were excavated shortly after this works was carried out. The applicant's agent tested these holes on 29th and 30th May. They were open and exposed for 6 months before they were inspected by the planning authority in November. Surface water could flow into them, which would result in the observations by the council's planner. The planning authority overlooked the presence of an existing septic tank. It is questionable whether or not the submission of a site suitability assessment is a fundamental requirement such that its absence would render the application invalid as is substantiated by section 20.2.4 of the development plan. The applicant's agent carried out all on-site testing and assessment strictly in accordance with the EPA code of practice and provided an objective opinion that it is suitable for a tertiary wastewater treatment system. No representative of the council with qualifications in hydrology or environmental pollution assessed the suitability based on the level of the water in the trial hole. Irrelevant photos were submitted with the area planner's report.
- The applicant's agent is outraged at the implications of the planning authority's decision. The site comes under section 6.6 of the EPA code of practice. The trial hole was not investigated by the planning authority for 6 months and it did not request that a new hole be opened. The submitted photos of the trial hole were ignored, where it can clearly be seen that there is no mottling within 800mm of the ground level which the EPA indicates shows the maximum height of the water table. The council planner's report does not address the matter of surface water inflow. It attempts to correlate the water table and percolation which is impossible. DVD recordings of the percolation test are submitted. It can be unequivocally stated that the percolation rate is adequate for the proposed hydraulic loading on the site, with the size of the

gravel pad and using a maximum pe of 6 it can be calculated that a fall of only 15mm in 24 hours is required. 20mm is observable in 40 minutes on the DVD. A revised site inspection at 15th December 2015 indicated that the ground was dry underfoot with no ponding evident, that the field drains and percolation test holes were dry, that there was a depth of 800mm of soil above the level of water in the trial hole, and that a nearby ditch 1.6m deep had a depth of water of 50-100mm. A video of the inspection is submitted. These substantiate the findings of the applicant's agent over those of the area planner in this case. The planning authority's reason for refusal is unsound. It is an undisputable fact that the EPA code of practice makes NO requirement for 900mm of unsaturated subsoil nor is there a need for trenches.

- The planning authority determined the proposed development without the appropriate expertise in a wholly unacceptable manner. It did not inspect the site notices within 5 weeks. A similar application was deemed invalid by the planning authority in October 2015 citing the fact that no site suitability assessment was submitted, even though one is only required for new developments and not for the proposed redevelopment of an existing cottage, as is demonstrated by section 20.2.4 of the development plan. This was compounded by the failure to give this application a reference number or to return the planning fee for 13 months.

6.2. Planning Authority Response

The planning authority did not respond to the appeal.

7.0 Assessment

- 7.1. The structure on the site is not a habitable dwelling. It could not provide the shelter and amenities required for human habitation without the carrying out of substantial works that would not be works of maintenance or improvement within the meaning of section 4(1)(h) of the planning act, even though an older septic tank remains in place on the site. The submitted account of the applicant's relationship to the land and her intentions regarding the former house are noted. However the question as to whether a previously established use has been abandoned for planning purposes is objective rather than subjective. The current condition of the structure on the site and its actual use over the past 30 years would lead a reasonable observer to conclude that its former residential use has been abandoned. The development that is now proposed would therefore involve a material change in the use of the site and its suitability for the proposed residential use should be determined in accordance with the applicable planning policies and standards for such use. These includes the full requirements of *the Code of Practice for Wastewater Treatment Systems Serving Single Houses* as the established use of the site for planning purposes does not involve the generation of domestic effluent. The arguments to the contrary set out in the appeal are not consistent with the observable condition of the site and are not accepted. The development currently proposed would involve further substantial works over and above those that would be required to restore that habitable status of the former cottage, and only a small part of the proposed house would correspond the previous one on the site.
- 7.2. Nevertheless there is no general restriction on the construction of new houses in this part of the countryside under either the development plan or the sustainable rural housing guidelines. The location of the proposed house would be in keeping with the established clustered settlement pattern in the area. Its scale and design would reflect those of other houses in the vicinity, and it would not detract from the area's rural character or visual amenity. The road access to the site is adequate to cater for the traffic that would be generated by the proposed house without causing traffic hazard or obstruction.
- 7.3. This leaves the issue as to whether the site is suitable for the treatment and disposal of the foul effluent that would be generated by the proposed house. There is no

doubt that the trial hole and percolation tests were carried out by the applicant's agent in a competent manner and that the results were accurately stated in the site suitability assessment submitted with the application. They are also consistent with the videos submitted with the appeal. Nevertheless those tests, of necessity, can only reflect the conditions that prevailed when they were carried out at a particular period of time. It is therefore reasonable for the planning authority to consider its own observations of conditions on the site in addition to those submitted by the applicant. Indeed it would be remiss of the planning authority not to do so. The observations of the ground conditions on the appeal site itself made at the time of my inspection indicate that those observed by the planning authority were reflective of the typical circumstances there, with extensive waterlogging and vegetation consistent with that state. The stream along the northern site boundary contained running water over a rocky bed. It is therefore a watercourse. It was not assessed as such in the site suitability assessment submitted with the application. It was apparent from the mounds, trenches and bare earth upon the site that groundworks have been carried out there relatively recently. These works would have the potential to alter its drainage characteristics in a manner that would affect a conclusion as to whether planning permission for a house should be granted there. It was noted that the ground conditions on the curtilage of the neighbouring house to the north were quite different from those on the appeal site and improvement works may have previously been carried out there. However section 6.5 of the EPA's code of practice makes it clear that site improvement works that could render it suitable for the treatment and disposal of domestic foul effluent should be carried out before the suitability of the site is determined. In this case that would mean that the suitability of the site in should not be resolved by a condition attached to a permission, but should be re-considered in the context of a further application.

- 7.4. The site drains towards the Doega River to the east of the site. It does not have a hydrological link with the SAC at the Keel Machair/Menaun Cliffs. There no pathway from the appeal site to the SAC, and the proposed development would not have the potential to have any effect upon it or any other Natura 2000 site.

8.0 Recommendation

8.1. I recommend that permission be refused.

9.0 Reasons

Having regard to the ground conditions observed on the site, the board is not satisfied that the site is suitable for the treatment and disposal of domestic foul effluent in accordance with the Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses 2009 and subsequent clarifications issued by the EPA. The proposed development would therefore be prejudicial to public health.

Stephen J. O'Sullivan
Planning Inspector

9th March 2017