



An
Bord
Pleanála

Inspector's Report PL 03.248041

Development	Retain first floor clear glass gable windows and the raised land levels within the site.
Location	Cappantymore, Meelick. Co Clare.
Planning Authority	Clare Co Council.
Planning Authority Reg. Ref.	16/924.
Applicant(s)	Ray Beegan.
Type of Application	Retention.
Planning Authority Decision	To Grant Permission
Type of Appeal	Third Party.
Appellant(s)	Richard & Dympna Gillman.
Observer(s)	None
Date of Site Inspection	May 9 th , 2017.
Inspector	Breda Gannon

1.0 Site Location and Description

- 1.1. The site is located at Cappantymore, Meelick. Co. Clare and to the north west of Limerick city. It is positioned on the south side of a local road to the west of Cappanteemore Bridge. It is one of a number of sites that has been developed in ribbon form along the road network. The site is adjoined to the west by a single storey dwelling on more elevated ground and to the east by a two-storey dwelling at a lower elevation. The pattern of development consists of one-off rural housing.
- 1.2. The site accommodates a dormer style house and garage which are set back from the public road. There are substantial gardens to the front and rear. The lateral site boundaries are formed by hedgerows and the front boundary is defined by a stone wall.

2.0 Proposed Development

- 2.1. The application seeks the retention of first floor clear glass windows and the raised land levels within the boundary of the site.
- 2.2. Unsolicited further information was submitted by the applicant on 11/1/17, responding to the issues raised by the observer.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the retention of the development subject to a condition that the development be retained in accordance with the drawings and particulars received by the planning authority on 29th, November, 2016.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **Planning Officer's** report of 30/01/17 notes that both gable windows have been fitted with clear instead of obscure glass. It is noted from the original plans that both windows serve bedrooms.

With regard to the window in the western elevation, it is not considered that overlooking issues arise as the house to the west has a blank gable and site levels are higher. A mature hedgerow provides effective screening.

The window on the eastern side overlooks the front garden of the adjoining property but does not result in direct overlooking of the rear private amenity space or the living areas of the house. There are no windows serving habitable rooms in the gable of the house to the east.

It is concluded that the retention of the clear glass in both gables as proposed is acceptable and would not result in adverse impacts on the amenity of adjoining property.

There is no objection in principle to the retention of site levels. The elevated levels are not considered to be excessive relative to the natural contours in the area, where the land rises westwards. When the original application was being determined (06/1180), the conifer trees were mature and are now over 12ft high and provide effective screening. Whilst it is noted that some of the wire fence had collapsed, in sections along the boundary, the ground is intact for the most part and shows no signs of serious instability. The retention of the levels as existing is considered acceptable.

3.3. Third Party Observations

The observation submitted to the planning authority raises similar issues to those raised in the appeal, and are discussed in more detail below in the assessment section of this report.

4.0 Planning History

06/1180 – Permission consequent on the grant of outline permission (Ref No. 04/1892) for the construction of a dwelling with a garage and proprietary effluent treatment system/percolation area on the site.

04/1892 – Outline permission granted for a dormer style house with wastewater treatment system, bored well and associated development on the site.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the **Clare County Council Development Plan 2017-2023**. The site is located in an Area of Special Control (Map H12). The site is located in an area designated 'Working Landscape' under the Landscape Designation of the Plan (Map C).

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows;

Breach of planning condition 2(ii)

- Clear glass has been installed in the first floor window in breach of the condition (06/1180). The requirement for a glazed window acknowledges that overlooking is an issue.
- The installation of a clear glass window with an opening is an invasion of privacy which is exaggerated by the adjoining site being at a higher elevation.
- It also results in the general amenity of the garden being severely affected.
- Replacing this window with obscure glass would protect the privacy and amenity of appellant's dwelling.
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Breach of planning condition No 12

- Condition No 12 required that a comprehensive landscaping scheme be submitted to the planning authority for written agreement prior to the commencement of development. Tree and hedgerow protection would have been one of the objectives of such a scheme.
- During the land raising process, fill was piled up against the trunks of the existing trees and hedgerows, which were damaged. A pre-existing concrete post fence was partially knocked. This has created an environment where the trees were not allowed to flourish. Due to these circumstances, it is considered that Condition No 12 has been breached.
- The drawing described as 'contiguous elevation' on reg. ref. No 06/1180 clearly shows that the boundary on both sides should be level with a gradual elevation of the raised lands towards Mr Beegan's dwelling. The commitment to taper the raised land as described by the drawing did not occur.
- The tapering of the raised lands as shown in the drawing would allow the light to penetrate at the base of the trees.
- Repair of the damaged post and appropriate tapering of the raised land would result in an acceptable finish, would reduce the potential for land slippage and the risk of injury to children. There is currently no barrier to prevent boulders and large stones from rolling into appellants' property.
- There is no finish to the raised lands and when the trees eventually fail, the appellants' will be left with a bank that will exceed 2 m in height.
- Due to the land raising process, Mr Beegan re-routed the group water supply pipe. This re-routed water supply pipe emerges at 0.8m above ground level at the boundary and the matter has not been rectified. The exposed nature of the water supply pipe breaches Condition No 13, which requires that all services be placed underground.
- Since the lands were raised there is pooling of surface water on appellants' land which occurs after rainfall and can remain for days.

Photographs are attached showing the first floor window and raised lands from appellants' property. Photographs are also shown from applicant's side of the

boundary, which indicate that the raised lands are only visible from Appellants property.

6.2. **Applicant Response**

A rebuttal to the grounds of appeal was no submitted by the applicant.

6.3. **Planning Authority Response**

The planning authority response of 3/3/17 considers that the retention of the clear glass in the window in the east gable will not result in adverse impacts on the adjoining property. The window overlooks the front garden only, which is entirely visible from the public road. It does not result in direct overlooking of the rear private amenity space and is partially screened by the conifer trees.

The previous grant of permission shows that the levels on the site were to be tapered to fall gradually towards the eastern boundary. This was not carried out on the site. From the enforcement history (EN 16/00093), it is noted that the first time the issue of site levels was brought to the planning authority's attention was approximately 9 years after the commencement notice was received (31/1/07). The claim by the appellant that the boundary is unstable is noted. This may be a civil issue between the parties concerned.

7.0 **Assessment**

- 7.1. The application seeks retention of first floor clear glass windows in both gables and the retention of existing site levels.
- 7.2. From my observations on site, I concur with the conclusions reached by the planning authority that there is no serious diminution of residential amenity arising from the retention of the development as constructed.
- 7.3. As noted, the first floor window in the west elevation does not give rise to overlooking with impacts on privacy, as it faces the blank gable of the adjoining house, which is

at a higher elevation. To the east, the adjacent house (appellants') is at a lower elevation and its front building line is recessed behind applicant's dwelling. There is potential for overlooking of the front garden, but as noted by the planning authority, this is already overlooked by the public road. With the exception of a high level window fitted with opaque glass serving the garage, there are no other windows in appellants' house that face towards the appeal site. Arising from the forward position of applicant's house and mature vegetation on appellants' property, there is limited potential for overlooking of the private rear garden area. Any views that would be available would be oblique, with no significant impacts on privacy. I have no objection therefore to the retention of the windows with clear glass as existing.

- 7.4. Having observed the boundary between the two properties from the public road, I do not consider that any significant impacts on residential or visual amenity arise from the retention of the site levels as existing. Ground levels fall from west to east which has resulted in differences in floor levels between properties. The works carried out to level the subject site, which were not tapered to create a slope, have resulted in an embankment along the common boundary between the two properties. The embankment has been colonised by vegetation and shows no sign of instability. No large rocks or boulders were evident with the potential to become displaced and create safety issues. The retention of the site levels as existing is considered to be acceptable.
- 7.5. I consider that any issue that arise regarding damage to trees, fencing etc are civil matters which are outside the Board's remit. Similarly, the issues raised concerning the re-routing of the Group Water Scheme pipeline is a matter between the applicant and the Trustees of the scheme.
- 7.6. With regard to matter of financial contributions, I draw the attention of the Board to the Development Contribution Scheme 2017-2023, adopted on 24/4/17. Under Exemptions (Note 1), it is stated that exemptions and reductions shall not apply to permission for retention of development under any category of development in the scheme. There is no specific category of use that applies to the subject development and I note that the planning authority did not levy a contribution.

8.0 **Appropriate Assessment**

The nearest European site is the Lower Shannon SAC (002167). The proposal is for a retention with no physical works proposed. Having regard to the nature and scale of the development and the separation distance from the Natura 2000 sites, I consider that the proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effects on Lough Corrib SAC or any other European Site, in view of the sites conservation objectives and that, therefore, a Stage Appropriate Assessment and the submission of a Natura Impact Statement is not required.

9.0 **Recommendation**

9.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be granted for the retention of the development for the reasons and considerations set out below.

10.0 **Reasons and Considerations**

Having regard to the established pattern of development in the area, it is considered that the development proposed to be retained would not seriously detracts from the visual or residential amenities of the area or of property in the vicinity and would therefore be in accordance with the proper planning and sustainable development of the area.

11.0 **No Conditions**

Breda Gannon
Planning Inspector

25th May, 2017