



An  
Bord  
Pleanála

## Inspector's Report PL16.248223

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<b>Development</b>	Construction of dog kennels, new access, effluent treatment system and all associated works.
<b>Location</b>	Breaghwy, Ballina, Co. Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	16/1029
<b>Applicant(s)</b>	Jill Ferguson
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Jill Ferguson
<b>Observer(s)</b>	Scoil Cholmcille
<b>Date of Site Inspection</b>	12 <sup>th</sup> May 2017
<b>Inspector</b>	Donal Donnelly

## 1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Breaghwy in northern Co. Mayo approximately 4km south-east of Ballina. There is a high density of one-off rural housing aligning local roads in the surrounding area. The appeal site is within a cluster of 7 no. dwellings and a national school. There are other groupings of dwellings between distances of 170m and 340m south-west of the site, and between 210m and 900m to the north. There is a disused quarry approximately 150m to the east.
- 1.2. The site itself contains a detached 2-storey dwelling (255 sq.m.) and a building to the side/ rear occupied by “Small Creatures” veterinary hospital (210 sq.m.). Ground levels rise slightly to the rear of the site and fall to a lower level down to a local road further to the west. There are mature hedgerows/ trees along side boundaries and the rear boundary comprises post and wire fencing. The stated site area is 1.148 hectares and this includes the northern site boundary and a narrow strip of the adjoining field, also in the applicant’s ownership. The site is currently served by a domestic wastewater treatment unit and water supply is from mains.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the erection of a new pet hotel/ dog kennels with a maximum capacity of 20 dogs and including the following:
  - Construction of a 281.88 sq.m. building connected to existing veterinary clinic;
  - Septic tank, peat filter and sand filter discharging to groundwater;
  - Surface water holding tank used for cleaning; and
  - Provision of sight lines in excess of 50m from site access.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Mayo County Council issued notification of decision to refuse permission for the proposed development for three reasons.

- 3.1.2. Under the first reason, reference is made to the rural location of the site in an unserviced area, and to the nature of the proposed development which is not dependent on its locality. It is considered that the proposal would constitute an unacceptable intensification of the current use and seriously injure the amenities and depreciate the value of property in the vicinity.
- 3.1.3. The second reason states that it has not been demonstrated that noise from the proposed development will not injure the amenities of the nearby school and residences.
- 3.1.4. Under the final reason, it is considered that insufficient information has been submitted to demonstrate that wastewater does not pose a risk to the receiving water body or lands.

## **3.2. Planning Authority Reports**

- 3.2.1. The recommendation to refuse permission, as outlined in the Planner's Report, reflects the decision of the Planning Authority.
- 3.2.2. Under the assessment of the application, it is noted that attempts have been made to address previous reasons for refusal relating to inappropriate rural location, noise and waste.
- 3.2.3. The applicant submits that they have failed to find any other suitable locations and the Case Planner states that this is not a planning consideration. Examples of other dog kennels are in sparsely populated areas and this is not considered to be the case in this instance.
- 3.2.4. It is noted that the site is located in a rural area, densely populated with one off housing, and there is a school across the road from the site. It is considered that the proposal would give rise to significant affects and it is not dependent upon this unsuitable location. The proposal is therefore considered to be contrary to Policy 29.1.
- 3.2.5. The proposal is also considered contrary to Policy 29.2, which states that no more than two full time employees shall be employed in a small start-up business. The 7 no. employees represent an intensification of the existing use that would be detrimental to the amenity of a primarily residential area.

- 3.2.6. In terms of noise, the applicant has attempted to address this by omitting the external play area. However, no noise monitoring was carried out at the school and therefore the noise study is considered by the Council to be inconclusive.
- 3.2.7. The applicant is now proposing to collect all suspended solids and soiled water in a septic tank to be then treated in peat and sand polishing filters before discharge to groundwater. It is noted that there was no trial hole open for inspection at the time of the site visit. In addition, no minimum separation distance was shown between the invert levels of the percolation pipes and groundwater. The water ingress level of 1m in September is considered high for the time of the year and it is noted that no Fetac certificate accompanied the site suitability assessment.
- 3.2.8. The Area Engineer recommends that further Information be sought from the applicant. The Council's Architect also had concerns regarding the intensification of use at this location and the scale and visual impact of the proposed structure. The Chief Veterinary Officer stated that waste and noise issues raised in the previous planning application have been addressed.

## 4.0 Planning History

### Mayo County Council Reg. Ref: 05/388

- 4.1. Permission granted for the erection of a new single storey granny flat extension to the side and rear of the existing dwelling.

### Mayo County Council Reg. Ref: 05/1996

- 4.2. Permission granted for a new pet hospital to the side and rear of existing dwelling.

### Mayo County Council Reg. Ref: 13/593

- 4.3. Permission refused for the construction of kennels for keeping dogs, together with soil water holding tank, soakaways and all other ancillary site works.
- 4.4. Under the first reason for refusal, it is stated that the proposal is not dependant on its locality and would materially contravene Objective E-04 of the Development Plan.
- 4.5. The second reason refers to the noise generated by the proposed development and the close proximity of the school and residential development.

- 4.6. It is considered under the final reason that insufficient evidence has been submitted to determine whether waste generated from the proposed development can be dealt with adequately and does not pose a risk to a receiving water body and thus public health.

## **5.0 Policy Context**

### **5.1. Mayo County Development Plan, 2014-2020**

- 5.1.1. The Economic Development Strategy is set out in Chapter 2 of the Development Plan. Objectives E-04 and E-05 relate to rural enterprise activities and home based employment.
- 5.1.2. Planning Guidance and Standards contained in Volume 2 and Objectives 29.1 and 29.2 are of relevance.

### **5.2. Natural Heritage Designations**

- 5.2.1. The River Moy SAC is 1.48km west of the site.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. A third party appeal was submitted on behalf of the applicant against the Council's decision. The grounds of appeal and main points raised in this submission can be summarised as follows:
- Site is very well screened with good hedgerows along both sides and fir trees along the front – proposed pet hotel located to the rear will also be very well screened.
  - Pet hotel is distinct from kennels and will exceed all current standards for dog boarding available in the country.
  - There are no appropriate locations for the proposed facility in the nearby urban area and the zonings within the Ballina Town Development Plan do not specifically provide for kennels.

- The current proposal has generous setbacks from houses and, in fact, the closest house is the applicant's.
- Board granted permission (PL16.239479) for a similar development at Coonaelcauraun, Ballina. There is no reference in this decision, or within PL09.210321 and PL07.212905, to the area being sparsely populated.
- A further example of kennels permitted in a rural area is at Cloona, Ballina (Reg. Ref: 06/2896).
- Site is at the edge of the cluster of dwellings – there are no houses to the north or west.
- A related use is present on site, i.e. the existing veterinary hospital – proposed use will be located to the rear of the veterinary clinic, thereby shielding it from both the nearest house and school.
- There is a range of farming related building in the area – pet hotel will be a far lesser impact, visual or otherwise.
- Proposed facility accords with Objective E-04 and belongs in this rural area. Proposal also fits with Objective E-05 as the applicant lives in the adjoining house.
- Policy 29.1 is not relevant in this case as the site is in a rural area where there are no zonings.
- Policy 29.2 is also irrelevant as the proposal is the development of an existing business.
- Proposal will generate four new positions on shifts and there will only be two additional staff on site at any one time.
- Exemption under Class 12 of Part 3 is applicable in rural areas and is indicative of the suitability of such locations for animals in general and for dogs in particular.
- Existing veterinary hospital has operated on site for a number of years without complaint (letters of support included). Letter of consent also included for sightlines.

- Proposed pet hotel is not expected to generate noise exceeding WHO Guidelines for Community Noise 1999 Limits.
- One of the noise monitoring locations was between the school and the site.
- Noise study is very a worst case scenario as noise measurements were taken by bringing 20 dogs into the existing veterinary hospital building, which is not designed for housing dogs.
- In terms of waste, the external play area was previously a concern as run-off would be soiled – exercise area will now be indoors.
- New wastewater treatment system will include water from washing out kennels and circulation areas once a week. Existing pet hospital, currently connected to the house system, will also be connected to the new system.
- Trial holes were open and will be kept open for Board's inspector.
- Assessor's Fetac certificate is attached to appeal response.
- Premises is on a group water scheme.
- Further details of proposed drainage system included with appeal submission, including finished floor levels of the house in relation to the invert levels of the drainage system.
- Revised site layout is included with the appeal showing 70m sightlines if considered necessary by the Board. Revised layout also shows the separation of access road to the pet hotel/ vet hospital from that of the dwelling house. Other matters can be dealt with by way of condition.
- Response from Council's Architect treats the surrounding area as residential rather than rural.
- Applicant considers that management principles employed on a small scale at the veterinary hospital will work well for up to 20 dogs in a purpose-built facility with additional resources and staff – a dog that is physically and mentally stimulated throughout the day is happy, relaxed and less likely to bark.

## 6.2. Observation

6.2.1. An observation on the appeal was received from the Principal and Chairman of the Board of Management of Scoil Cholmcille. The main points raised in this submission are as follows:

- Site is well screened and the proposed pet hotel, located to the rear of the existing building, will be similarly well screened.
- Observers are satisfied that the safeguards to be implemented with respect to noise, waste and traffic are appropriate and adequate.
- Observers have never had a cause for complaint with the existing pet hospital in its 10-year operation – based on this, and the detailed evidence provided, the new development would not negatively impact on the operation of the school in any way.
- Observers are pleased to learn, as a result of the proposed development, the roadway directly outside the school will be set back 3m opposite in order to extend sightlines – this would significantly improve safety at the school.
- Proposed development would have a positive impact on the local area and the Observers fully support the applicant.

## 7.0 Assessment

7.1. In my opinion, the main issues to be addressed in this appeal are as follows:

- Development principle;
- Impact on the amenities of the area;
- Wastewater treatment and disposal; and
- Appropriate Assessment.

### 7.2. Development principle

7.2.1. Volume 2 of the Development Plan sets out planning guidance and standards for different forms of development in Co. Mayo. It is stated under Section 29.1 that “*the*



*primary aim of the Council is to ensure that development is located in suitable locations that do not give rise to adverse affects on the surrounding population and environment.”* In this regard, development on unzoned lands will be assessed on the good neighbour principle.

- 7.2.2. Section 29.2 refers to small start-up enterprises and developments employing no more than two persons that shall be considered in existing residential premises subject to there being no adverse impacts on neighbouring properties and on the environment (e.g. noise, odour, dust, light pollution and traffic). It goes on to state that *“if such development expands, the development will be required to re- locate onto suitably zoned lands or suitable brownfield sites.”*
- 7.2.3. It is considered under the Council’s first reason for refusal that the proposed development would materially contravene the above Policy Objectives having regard to the rural location of the site in an unserviced area and the nature of the development proposed, which is not dependent on its locality. It is stated that the proposal would constitute an unacceptable intensification of the current use and would set an undesirable precedent.
- 7.2.4. The applicant counters the above reason for refusal by contending that Sections 29.1 and 29.2 are not relevant in this case, as the site is in a rural area where there are no zonings and the proposal relates to the development of an existing business. Furthermore, it is submitted that there are no appropriate locations for the proposed facility in the nearby urban area, and the zonings within the Ballina Town Development Plan do not specifically provide for kennels. It is also highlighted that the existing veterinary hospital has operated on site for a number of years without complaint. The appellant considers that the proposed facility accords with Objective E-04 and belongs in this rural area. In addition, it is also submitted that the proposal complies with Objective E-05, as the applicant lives in the adjoining house.
- 7.2.5. Objective E-04 seeks *“to facilitate agri-industry and other rural enterprise activities that are dependent on their locality in rural locations, where it can be demonstrated that the development will not have significant adverse effects on the environment, including the integrity of the Natura 2000 network, residential amenity or visual amenity. Preference will be given to occupying vacant structures which the planning authority consider appropriate for the use proposed.”* It is also an objective of the

Council (E-05) *“to encourage and facilitate home-based employment of appropriate type, size and scale, where it can be demonstrated that the development will not have significant adverse effects on the environment, including the integrity of the Natura 2000 network, residential amenity or visual amenity.”*

- 7.2.6. It is clear from the above that a development such as that proposed may be considered acceptable in principle where there are no adverse impacts on residential amenities and the environment. These issues are addressed in more detail below. Other locational factors to be considered are the suitability of the site and whether the use is functionally related to this rural area. In addition, the issue of intensification of use should be addressed.
- 7.2.7. In my opinion, a development consisting of dog kennels is better suited to a sparsely populated rural area where the impact of noise nuisance can be minimised. The Planning Authority considered that the proposal is not dependant on its locality; however, I would be satisfied that a development such as this, whilst not being functionally related to the countryside, must nonetheless be situated in a rural area owing to the nature of associated impacts, mainly noise.
- 7.2.8. With respect to intensification of use, it is stated under Section 29.2 that if a small start-up enterprise expands beyond two employees, it will be required to relocate onto suitably zoned lands or brownfield sites. In this regard, I note the appellant’s argument that dog kennels are not specifically provided for within the Ballina Town Development Plan zonings and there are no appropriate locations for the facility within the nearby urban area.
- 7.2.9. I would therefore be of the opinion that the proposed development is acceptable in principle subject to an assessment of its impacts on the residential and environmental surroundings. A proposal of this nature is suited to a rural area and I consider that it would be preferable to intensify an existing use rather than facilitate a new use at a separate location. However, any intensification of use would only be acceptable where it does not significantly impact on the surroundings.

### **7.3. Impacts on the amenities of the area**

- 7.3.1. The Council considers under its second reason for refusal that it has not been demonstrated that the proposed development, be reason of noise, would not injure

the amenities of nearby properties. It was also considered within the Planner's Report that the noise study submitted with the planning application is inconclusive and did not demonstrate that the proposal would not have an adverse impact on residential amenity.

- 7.3.2. In response to this reason for refusal, the appellant submits that the noise study is very a worst case scenario, as noise measurements were taken by bringing 20 dogs into the existing veterinary hospital building, which is not designed for housing dogs. It is noted that one of the noise monitoring locations is between the school and the proposed pet hotel and that overall, the proposed development is not expected to generate noise exceeding WHO Guidelines for Community Noise 1999 Limits.
- 7.3.3. The appellant also points to a number of letters of support attached to the appeal submission from five of the appellant's neighbours. It should be noted that the Planning Authority received no objections, and an observation in support of the proposal was submitted to the Board from the nearby school.
- 7.3.4. Notwithstanding the above, I would still share the Planning Authority's concerns that the noise generated from the proposed development could have the potential to cause significant disturbance. I do not consider this to be a sparsely population rural area, as there are six other dwellings in the immediately area and approximately 14 further dwellings on lower ground to the west, all within 350m of the site boundary. Most significantly is the presence of the nearby of the school with an enrolment of approximately 235 pupils. There is potential for significant noise from the operation of the proposed facility from dogs barking, howling, etc. and this will be more audible within the quiet countryside. It is likely that dog barking will occur mostly at feeding times or at the sight of visitors and this will quieten down after a number of minutes. I also note that it is now proposed to keep dogs indoors at all times. However, the design of the facility could still allow for dogs to access the enclosed courtyard area and it would be difficult to enforce by way of condition that the dogs shall remain indoors at all times.
- 7.3.5. I would therefore concur that the potential noise generated by the proposed development will injure the amenities of properties in the vicinity.

#### **7.4. Wastewater treatment and disposal**

- 7.4.1. Under the final reason for refusal, it is stated that insufficient evidence has been submitted to determine whether waste generated from the proposed development can be dealt with adequately and that it does not pose a risk to the receiving water body or lands and thus public health. This follows a previous proposal that was refused on site under Reg. Ref: 13/593 to collect the soiled wastewater into an onsite holding tank to be emptied with the soiled water and land spread.
- 7.4.2. It is now proposed to collect all wastewater via a series of floor channels that will drain to a septic tank for primary treatment and the effluent from the septic tank will be pumped to a peat filter system for secondary treatment. Animal faeces will be collected and disposed of into the septic tank primary chamber. Tertiary treatment will then take place via a sand polishing filter before disposal to subsoil. All waste from the facility, including the veterinary hospital, will be collected and treated in the new wastewater treatment system. It is stated within the Wastewater Treatment Planning Compliance Report submitted with the planning application that the system has been designed to allow soiled water generated from the cleaning of the facility, and the peat filter has been chosen over a mechanical aeration system to accommodate increased wastewater shock loading at cleaning times. The system is designed with a PE of 6.
- 7.4.3. The site characterisation form submitted with the planning application confirms that the site is within a regionally important aquifer and the vulnerability has a high rating. There is an existing drainage ditch along a section of the northern boundary and there were rushes present towards the rear of the site near to where the 15 sq.m. percolation area is proposed. A 2.5m trial hole was opened on site and at the time of my site visit there was some water present. The stated depth to ground water within the site characterisation form is 1.3m. The T test recorded a value of 34.44.
- 7.4.4. The first party appeal includes additional comments relating to wastewater treatment and disposal. The vertical separation distances from the invert level to the bottom of the sand polishing filter are shown and the proposed peat filters and septic tank have been moved further away from the existing open drain. It is submitted that the water table recorded in September is indicative of the winter water table.

- 7.4.5. Notwithstanding this, there are still indications of a high water table and it is unknown to what maximum level it could rise to. My observations are that there are rushes present on site and there was still water in the trial hole during a prolonged period of dry weather. In this regard, there was only 23.6mm of rainfall at Knock Airport during the preceding month of April, when the equivalent amount for the same month during the previous four years was 84.1mm, 87.3mm, 34.4mm and 81.6mm respectively. It also appears that there was little or no rainfall during the first 11 days of May up to my site visit.
- 7.4.6. I would also have serious concerns with the proposal to dispose of potentially high volumes of dog faeces within a domestic wastewater treatment system. It is unclear if the waste generated by the proposed development will exceed the design capacity of the wastewater treatment system. The system will have a PE of 6 and the proposed pet hotel will have a capacity for 20 dogs. It is also proposed to connect the existing pet hospital to the proposed wastewater treatment system.
- 7.4.7. In addition to the above, it has not been demonstrated to my satisfaction that this is an appropriate method for the disposal of dog waste. Dog waste contains pathogens and it may also decay differently to human waste. It is unclear as to what effect this may have on groundwater, particularly when there is evidence of a high water table. In my opinion, it may not be appropriate to dispose of dog waste within a system designed for human waste only. Furthermore, there may be high quantities of dog hair transmitted to the wastewater treatment system and this could have the effect of blocking pipework.
- 7.4.8. Overall, I would be of the opinion that the applicant has not submitted sufficient evidence that the proposed domestic wastewater treatment system is suitable to serve the proposed facility.

## 7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature of the proposed development and/or nature of the receiving environment and/or proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. It is considered that the proposed development should be refused for the reasons and considerations hereunder.

## 9.0 Reasons and Considerations

1. Having regard to the location of the proposed dog kennels in close proximity to residential dwellings and a school, it is considered that, notwithstanding mitigation measures, the proposal would constitute an unacceptable intensification of the current use on site and would seriously injure the amenities of properties in the vicinity by reason of noise and general disturbance. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the evidence of a high water table on site and to the unknown volume and the type of waste produced by the proposed facility, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that animal effluent from the development can be satisfactorily treated and disposed of on site, via a proprietary wastewater treatment system designed to treat human waste. The proposed development would, therefore, be prejudicial to public health.

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Donal Donnelly  
Planning Inspector

22<sup>nd</sup> June 2017