



An  
Bord  
Pleanála

## Inspector's Report PL03.248664

---

<b>Development</b>	Construct a two storey dwelling house, single storey garage and all associated site works
<b>Location</b>	The Village Green, Tuamgraney, Co. Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	17-74
<b>Applicant(s)</b>	Luke Fleming
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First Party against Development Contribution
<b>Appellant(s)</b>	Luke Fleming
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> of August 2017
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1.1. The site is located within the settlement boundary of Tuamgraney and comprises a gap between two houses. There is a more traditional two-storey house with a single storey side element to the north of the site, the rear elevation of which faces the subject site, and a bungalow to the south. There are mature non-native trees along part of the front boundary of the site and along the southern boundary of the site. The site is relatively flat and level with the road and there is a footpath along the roadside edge. There is an electricity pole and overhead wires running along the front of the site.
- 1.1.2. The centre of the village is to the north of this site. There is a central village green area with mature trees and natural bedrock area which provides a feature to the north of the site. There are a number of older more traditional properties in the village. There is a castle that can be seen from the site to the south of the village.

## 2.0 Proposed Development

- 2.1.1. It is proposed to construct a new two storey dwelling house, single storey garage and associated ancillary site works.
- 2.1.2. The application form provides that the site area is 0.0517ha and the applicant is the landowner of the site, which is needed as his permanent residence. It is proposed to provide a new connection to the public mains and sewer. Surface water management is to be via a soakpit.
- 2.1.3. It is provided that the floor area of the proposed two storey 3no. bedroomed dwelling is 116.6sq.m. A Site Layout Plan, Floor Plans, Sections and Elevations have been submitted. This includes that the proposal includes a detached garage with a floor area of 44.13sq.m. The height of the proposed dwelling is 7.99m to ridge height and 5.97m to eaves level. Contiguous Elevations have also been submitted showing the proposed dwelling in the context of the streetscape.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On the 9<sup>th</sup> of May 2017 Clare County Council granted permission for the proposed development subject to 11 no. conditions. These include reference to infrastructure, services and construction related issues. The following are of note:

- Condition no.2 provides that the proposed dwelling shall be for use as a permanent place of residence.
- Condition no.3 provides for amendments to design features and is relevant to external finishes and seeks to protect the character of the ACA.
- Condition no.11 provides for Development Contributions.

### 3.2. Planning Authority Reports

#### 3.2.1. Planner's Report

This had regard to the locational context of the site, planning history and policy. It was noted that there were no submissions or third party observations made. In view of the location of the site within the village setting on a fully serviced site it was not considered that it is necessary to carry out EIA or an AA screening. The development as proposed was considered to be acceptable in principle on lands with a mixed use development zoning. They did not consider that the proposed dwelling would impact adversely on neighbouring properties. Having regard to the details submitted and the one-way traffic system as in place at this location, they considered that the proposed development would not have a negative impact on road safety. Also that sufficient car parking would be available on site. They noted that the subject site is not located within the flood plain. They provided that normal development contributions should be sought in accordance with the development contributions scheme of Clare County Council.

They requested that Further Information be sought relative to the proposed design of the front elevation, considering its location within an ACA. Also in view of the planning history and mixed use zoning, they were invited to elaborate on any future development intentions for this site.

### 3.2.2. Further Information response

Richard Robinson, Architect Technician, has submitted revised drawings showing modifications to fenestration and layout to the proposed east elevation to address the concerns raised by the planning authority. He has also submitted a written statement in relation to the future development intentions for the site.

### 3.2.3. Planner's response

The Planner had regard to the F.I submitted. They noted that the applicant has submitted a revised eastern elevation of the proposed dwelling house. They provided that having regard to the mixed use development land use zoning on this site and its nature as an infill development site, that the principle of the provision of a dwelling on this site is considered to be acceptable. However, they had some concerns in particular relative to fenestration, layout, form and materials on the front (east) elevation that the dwelling would not be in keeping with context of the site and the character of the ACA at this location. They considered that this matter could be addressed by way of condition. They recommended that permission be granted subject to conditions.

## 3.3. **Other Technical Reports**

3.3.1. None noted.

## 3.4. **Prescribed Bodies**

3.4.1. No consultations or responses noted.

## 3.5. **Third Party Observations**

3.5.1. As provided in the Planner's Report there have been none noted.

## 4.0 **Planning History**

4.1.1. Ref.CE17-12 - An Exemption Certificate from Part V, Section 97 of the Planning and Development Act 2000(as amended) from Clare County Council is included on file.

4.1.2. The following permission was granted by Clare County Council on the subject site to Steve Smith but was never constructed and has since expired:

- Reg.Ref.11/711 – Permission granted subject to conditions for the construction of 2no. 2 storey semi-detached houses, connection to public services, site entrance and associated site works.

## 5.0 Policy Context

### 5.1. Clare County Development Plan 2017-2023

The site is located within the settlement boundary of Tuamgraney and is zoned as mixed-use development.

Zone 7 North East Clare: *This zone contains an area around Scarriff/Tuamgraney.*

Section 2.4 refers to the Core Strategy and includes the Scarriff/Tuamgraney area as a joint service town in the region. The Settlement Hierarchy is illustrated in Map 2A and set out in Table 2.1. Section 3.2.3 describes it as a linked settlement.

Section 3.2 refers to the Settlement Strategy and provides that it is envisaged that development will take place in these towns/settlements. Objective CDP 3.3 refers

CDP 4.3 refers to Living in our Towns and Villages and includes that it is an objective c) *To encourage the development of new residential accommodation in or adjoining town centres and to ensure that such developments provide a range of accommodation types and tenures and a high level of residential amenity;*

The subject site is also designated as being with the Town centre of Tuamgraney and is within the ACA at this location. As such Objective CDP15.5 refers and is noted in the Assessment below.

Appendix 4 refers to ACAs and includes the following description relative to Tuamgraney: *The village is a pleasant hamlet consisting of two storey, three bay, gabled houses and commercial premises with wooden sash windows and Killaloe slate roofs. The buildings and boundary walls are constructed of local sandstone blocks, giving the structures a soft, warm texture not found in the west or south of the County. The village centre appears to have been unaffected by modern development and materials and still retains its 18th century market village character.*

### *Architectural Conservation Area (ACA)*

A Glossary of Terms is provided which includes the following definitions:

*Architectural Conservation Areas are areas designated to preserve the character of places and townscapes which are of special architectural, historic, archaeological, artistic, cultural, scientific, social or technical interest or that contribute to the appreciation of protected structures.*

A definition of Development Contributions provides that these are: *Charges or levies placed on developers relating to the relative cost of services and utilities which are provided by Clare County Council.*

Appendix 1 provides the Development Management Guidelines - Section A1.14 provides: *The Planning Authority, taking into consideration the capital expenditure necessary for the provision of infrastructure required to facilitate development, will require financial contributions for permitted developments. The Council has prepared a schedule of development contributions in accordance with its obligations under Sections 48 and 49 of the Planning and Development Act, 2000 (as amended) and having regard to 'Development Contribution Scheme – Guidelines for Planning Authorities' (DoEHLG 2013), which is reviewed annually. Details of the rates applied are available from the Planning Department and are payable prior to commencement of development. In exceptional circumstances a Special Development Contribution may be required in addition to the standard rates in order to provide a specific piece of infrastructure, the provision of which will facilitate the development as proposed.*

Volume 3 contains the Municipal District Written Statement and Settlement Plans. Section 3(c) refers to Killaloe Municipal District Area Settlements and includes the service towns of Scarriff/Tuamgraney.

### **5.2. Development Contributions Scheme 2017-2023 (under Section 48, Planning & Development Act, 2000 as amended)**

Section (D) refers to Reductions & Exemptions. Table 1: Reductions

*(5) Development within an architectural conservation area (ACA) that the Council considers retains and enhances the architectural character of the area - 50%.*

## **6.0 The Appeal**

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

6.1.1. A First Party Appeal has been submitted by the applicant Luke Fleming. He wishes to appeal Condition no.11 of the Council's permission, on the grounds that the Council did not correctly apply its Development Contributions Scheme. The grounds include the following:

- The documentation submitted to the planning authority was accompanied by a Design Statement. They ask the P.A to consider a reduction in the development contribution scheme as in their view it is a development that would enhance the ACA.
- They believe that the proposed development represents a thoughtful and well considered contemporary scheme for a key infill site and will make a fitting contribution to the revitalisation of the village core by respecting and enhancing the existing architectural character of the village.
- They note that the Clare County Council adopted Development Contributions Scheme allows for a 50% reduction where the proposed development retains or enhances the ACA. They consider that this reduction should have been applied as the proposed development meets the criteria for a reduction.
- They include their reasoning for this relative to the benefits of the development and the enhancement of the ACA and provide before and after photos of the site. This issue is discussed in more detail in the Assessment below.

### **6.2. Planning Authority Response**

6.2.1. They note that under the Development Contributions Scheme there is a reduction for developments within ACA's that the Council considers enhance the character of the area. Whilst the P.A has no objection to the current proposal, which is a new modern building they do not consider that the reduction applies in this instance. They note that a similar reduction applied in the previous DCS but that this was not applied under the permission granted in Reg.Ref.11/711. As such the P.A has been

consistent in its application of the scheme. They request the Board to uphold this condition.

## 7.0 **Assessment**

### 7.1. **Regard to Legal Framework**

7.2. This is an appeal in relation to the application of a development contribution only. As per Section 48(10)(a) of the Planning and Development Act 2000 as amended, the Board shall not determine the application as if it was made to it in the first instance and will only determine the matters under appeal.

7.3. An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of a Development Contribution Scheme has not been properly applied in respect of any condition laid down by the planning authority. In this appeal the issue to be considered is whether the terms of the Scheme have been properly applied.

7.4. The current appeal is made under Section 48(10)(b) of the Planning and Development Act, 2000 as amended. Consequently, the question to be addressed is whether the terms of the development contribution scheme have been properly applied by the planning authority in its imposition of condition No.11, and this issue is considered below.

### 7.5. **Regard to Condition no.11**

7.5.1. The Council's permission includes Condition no.11 which includes the following:

*Prior to the commencement of development the developer/applicant shall pay a contribution of €5,549.00 to Clare County Council (Planning Authority) in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority that is provided for or intended to be provided by or on behalf of the authority in accordance with the terms of the development contribution scheme made under Section 48 of the Planning and Development Act 2000 as amended.*

7.5.2. It is of note that this amount is in accordance with Table A of the Clare County Council Development Contributions Scheme 2017-2023 which provides that the total



levy for residential development contributions is €5,549. The Planner's response to the grounds of appeal provide that they decided not to allow for the 50% reduction for the scheme as provided in Part D *Reductions and Exemptions* of the current Development Contributions Scheme i.e (5) *Development with an architectural conservation area (ACA) that the Council considers retains and enhances the architectural character of the area*. While they consider the proposal acceptable they do not consider that the reduction would apply relative to this modern building. They also note that there is no precedent for applying such a reduction relative to previous applications on this site.

### **Regard to Impact on the ACA**

7.5.3. The First Party is concerned that the 50% reduction relative to development that would enhance the appearance of the ACA should have been applied. They consider that a reduction should have been applied as the proposed development meets the criteria for a reduction. They include 'before' and 'after' photos showing the site to illustrate the positive effect the removal of trees has had on the amenity of the site and the wider village area. They provide that this infill development on this vacant overgrown site will make a significant contribution to the ACA and the village of Tuamgraney. Also that the proposed new two storey dwelling, single storey garage and site entrance are linked by proposed new site boundary walls to create a strong visual continuity which acts as a cohesive and respectful new addition to the existing streetscape and provides infill to what has been an unsightly gap in the village core. They also consider that the new development builds upon the immediate historical context to retain and enhance the ACA.

7.5.4. Section 15.3 of the Clare CDP 2017-2023 refers to Architectural Heritage. This includes Objective CDP 15.1 which seeks to ensure the protection of ACA's and protect them from unsympathetic developments nearby. Section 15.3.4 refers to ACA's and includes: *The spatial character of ACAs can be the basis for their designation and development proposals must enhance and support the definition of that space*. CDP15.5 provides the criteria relative to objectives for ACA's. This includes: a) *To ensure that new developments within or adjacent to an ACA respect the context of the area and contribute positively to the ACA in terms of design, scale, setting and material finishes*.

- 7.5.5. Regard is also had to Volume 3 of the CCDP 2017-2023 which includes regard to *Housing and Sustainable Communities in Tuamgraney*. As noted by the First Party this includes: *There are 3 small infill sites in separate ownership in the village centre of Tuamgraney – two of which are on the derelict sites register. All 3 sites had buildings of residential use and their sympathetic reinstatement at this location would serve to greatly enhance the village centre, which is an Architectural Conservation Area, while also increasing the population in the village centre and in turn increasing demand for local services.*
- 7.5.6. It was noted on site there are a number of vacant or semi-derelict properties in the village and it is not known if the above refers to the subject site. However while it is not considered that the proposed more modern house type will greatly enhance Tuamgraney ACA, it will not detract from it and will retain its character, provided quality external finishes are used (Condition no.3 of the Council's permission is of note). It will allow for an infill development that will provide some focal interest on what is a visually prominent site adjacent to the village green and natural rock outcrop. Therefore, it could be argued that the Council should not have permitted the new build on this prominent site unless they considered that it protected/retained and enhanced the character of the ACA and that the reduction in development contribution should apply.

## 7.6. **Appropriate Assessment**

- 7.6.1. The site is not located within or near to a Natura 2000 site. This is to be a fully serviced site within the village boundaries of the settlement of Tuamgraney. Having regard to the nature and scale of the proposal, no appropriate assessment issues arise and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 **Recommendation**

- 8.1.1. Having regard to the documentation submitted and the observations made including the First Party grounds of appeal it is recommended that the Planning Authority be directed to amend condition no.11 to allow for the 50% reduction in development contributions.

## 9.0 Reasons and Considerations

- 9.1.1. Having regard to the Reductions and Exemptions provided for within the Clare County Council Development Contribution Scheme 2017-2023 applicable to developments that would be considered to retain or enhance the character of an Architectural Conservation Area and to the fact that no previous development contributions have been paid with respect of a dwelling on site, it is considered that this proposal would not detract from and would retain/enhance the character of Tuamgraney ACA. Therefore, the terms of the Clare County Development Contribution Scheme 2017 - 2023 have not been properly applied in this case. It is recommended that Condition no.11 be amended to allow for the 50% reduction as below.

### 10.0 Condition no.11

The developer shall pay to the planning authority a financial contribution of €2,774.50 (two thousand, seven hundred and seventy four euro and fifty cent) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

---

Angela Brereton,  
Planning Inspector

22<sup>nd</sup> of August 2017