



An  
Bord  
Pleanála

## Inspector's Report PL20.249041

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<b>Development</b>	Change of house type from that previously permitted, construction of garage and associated services
<b>Location</b>	Gortanabla, Ballinasloe, County Roscommon
<b>Planning Authority</b>	Roscommon County Council
<b>Planning Authority Reg. Ref.</b>	PD/17/274
<b>Applicant(s)</b>	Gerard Dolan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First-Party
<b>Appellant(s)</b>	Gerard Dolan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	15 <sup>th</sup> November 2017
<b>Inspector</b>	Colm McLoughlin

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## 1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Gortanabla, in rural south County Roscommon, approximately 6km north of Ballinasloe town centre. It is situated along a fairly straight stretch of the R357 regional road, which connects Ballinasloe with Roscommon town to the north.
- 1.2. It comprises undeveloped land measuring approximately 0.2ha, with low boundary wall to the front. The rear and south side boundaries are lined by a mix of trees, predominantly comprising Leylandii Cypress.
- 1.3. The surrounding area is generally characterised by low-lying agricultural fields with detached housing fronting onto a network of regional and local roads. The appeal site sits between two detached houses on similar size plots to the appeal site. Ground levels within the site drop slightly towards the front and in the wider area levels drop slightly moving west towards the River Suck.

## 2.0 Proposed Development

- 2.1.1. The proposed development comprises the following:
  - change of house type from that granted planning permission under Roscommon County Council (RCC) Planning Reg. Ref. PD/07/1777, as extended by Ref. PD/12/3098;
  - construction of a single-storey garage;
  - installation of a septic tank and a percolation area;
  - all associated services and landscaping.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission subject to one condition, as follows:

- ‘This planning permission authorises a change of house type only on the subject site from that originally granted under Planning Reference No. PD/07/1777 (Extended by PD/12/3098). The revised development shall be carried out in accordance with the plans and documents submitted on the 20<sup>th</sup> June, 2017, and the overall development shall otherwise be carried out strictly in accordance with the conditions of the governing consent (PD/07/1777). Permission shall expire on 2<sup>nd</sup> January 2018, in accordance with the governing consent (PD/07/1777 and EOD PD/12/3098).

**Reason:** In the interests of the proper planning and development of the area and in the interests of orderly development’.

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

#### 3.2.1. Planning Reports

The report of the Planning Officer reflects the decision of the Planning Authority.

The Planning Officer notes the following:

- Principle of the development established under a previous planning permission;
- No objection to the development in terms of traffic safety, arrangements for servicing, as well as impacts on residential and visual amenities.

#### 3.2.2. Other Technical Reports

- Environment Section - no objection subject to conditions.

### 3.3. **Prescribed Bodies**

- Irish Water – no response.

### 3.4. **Third-Party Submissions**

#### 3.4.1. None.

## 4.0 Planning History

### 4.1. Subject Site

4.1.1. Each of the following applications decided by the Planning Authority relate to the appeal site:

- PD/97/757 – Applicant Gerard Dolan - Permission **granted** (November 1997) for dwellinghouse and septic tank;
- PD/02/1024 – Applicant Gerard Dolan - Permission **granted** (January 2003) for a change of house type and to install a septic tank;
- PD/07/1777 – Applicant Gerard Dolan - Permission **granted** (January 2008) for a change of house type, to construct a garage and to install a septic tank;
- PD/12/3098 – Applicant Gerard Dolan – Extension of Duration of Ref. PD/07/1777 **granted** (December 2012) for a change of house type, to construct a garage and to install a septic tank.

### 4.2. Surrounding Sites

4.2.1. Recent applications for development in the immediate vicinity largely comprise proposals for one-off housing developments and domestic extensions.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The policies and objectives of the Roscommon County Development Plan 2014-2020 are of relevance to the assessment of this appeal.

#### *Rural Housing Policy*

5.1.2. For the purposes of rural housing policy, County Roscommon is divided into two distinct areas. The appeal site is within Category B – Areas under Urban Influence in south Roscommon, where individual housing developments will be facilitated in principle to meet the rural-generated housing need criteria set out in the ‘Definition of

Rural-Generated Housing Need' in Table 5.3 of the Plan. Policies and suitability criteria for rural area types are set out in Table 5.4.

5.1.3. The following other sections of the Development Plan are also relevant:

- Section 7.6 – Landscape Protection;
- Section 9.2.3 – Wastewater treatment for single houses;
- Section 9.4 - Flood Risk Protection;
- Section 9.5 - Rural Siting and Design;
- Section 9.8 - Rural Residential Consideration.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A first-party appeal has been lodged by Dolan and Associates Ltd. Civil Engineering and Architectural Consultants, only against Condition No. 1 attached to the Planning Authority notification of a decision to grant permission. The grounds of appeal, which are accompanied by various supporting extracts, can be summarised as follows:

#### Wording of Condition

- Permission appears only to allow for a change of house type and it is unclear whether or not the permission provides for the construction of a garage, which formed part of the development description;
- For legal and financial reasons, the condition should not refer to Planning Refs. PD/07/1777 and PD/12/3098.

#### Development Contributions

- RCC Development Contribution Scheme has not been correctly applied;
- Condition No. 11 of a previous permission on site, Ref. PD/07/1777, required payment of €5,420 in development contributions;
- Should the current Development Contribution Scheme be applied correctly, the proposed development would attract a development contribution of €3,600

(reference and extracts provided relating to a recent neighbouring permission under Ref. PD/17/36 for a dwelling).

#### Time Constraints

- Application was for full planning permission and a fee of €65 was paid to reflect this;
- Decision is unduly restrictive in that it requires the applicant to have the dwellinghouse substantially complete by the 2<sup>nd</sup> day of January 2018;
- Difficulties would arise in completing the works within the timeframe due to financial, procedural and operational constraints;
- Justification for amending the period for the permission provided with reference to legal case (Bord na Móna v An Bord Pleanála & Galway County Council) and An Bord Pleanála decisions (ABP Refs. PL20.205233 and PL37.213661);
- The condition is unreasonable and cannot be considered a valid exercise of statutory powers by the Planning Authority.

## 6.2. Planning Authority Response

- 6.2.1. The Planning Authority response to the grounds of appeal can be summarised as follows:

#### Wording of Condition

- This change of house type application is intrinsically linked to the original permission;
- Planning Authority accept that the wording of the condition should have specifically referred to the garage;

#### Development Contributions

- As the permission relates to amendments to an extant permission subject to a requirement to pay a stated contribution, the Planning Authority would not benefit by applying the current Development Contribution Scheme;

- Contribution requested under the reference permission Ref. PD/17/36 related to a new dwelling application, as opposed to the subject 'change of house type' application, and was applied correctly;
- A proportion of the previous contribution requested under PD/07/1777 (€5,420) was for the provision of water services, and this is now transferred to Irish Water;

#### Time Constraints

- Only the excess amount of the planning application fee has been refunded;
- Time period is bound by the most recent governing consent and is not 'shortening the life of the permission';
- To grant an additional five years to this permission would be contrary to practise currently undertaken by the Planning Authority with respect to similar applications (17 cases referenced) and An Bord Pleanála decisions (ABP Refs. PL05E.247770 & PL05E.247155), and would be contrary to planning legislation.

### 6.3. Further Response

- 6.3.1. Given the substantive response of the Planning Authority to the grounds of appeal, the comments of the appellant were invited, and the response can be summarised as follows:

#### Wording of Condition

- The application is for full planning permission and not simply a 'change of house type' application;
- Planning Authority also fails to recognise the associated ancillary site works required to serve the development in the condition;

#### Development Contributions

- The Planning Authority should be applying the terms of the current RCC Development Contribution Scheme 2014;
- Current proposals are for a new house and therefore similar to the planning application previously referenced in the grounds of appeal, Ref. PD/17/36,



where a contribution was applied under the terms of the RCC Development Contribution Scheme 2014.

#### Time Constraints

- The correct planning application fee, €65, was submitted;
- It is 'mischievous' of the Planning Authority to suggest a new full permission should have been sought for a dwelling on site;
- The 17 'change of house type' applications referenced by Roscommon County Council were not decided by the Board;
- Further reference to a decision by the Board (PL07.218070) for a 'change of house type' application, where a five-year permission was granted.

#### 6.4. Observations

None.

### 7.0 Assessment

#### 7.1. Introduction

7.1.1. This is a first-party appeal only against Condition No.1 attached to the Planning Authority's decision to grant permission. Condition No.1 requires:

- 'This planning permission authorises a change of house type only on the subject site from that originally granted under Planning Reference No. PD/07/1777 (Extended by PD/12/3098). The revised development shall be carried out in accordance with the plans and documents submitted on the 20<sup>th</sup> June, 2017, and the overall development shall otherwise be carried out strictly in accordance with the conditions of the governing consent (PD/07/1777). Permission shall expire on 2<sup>nd</sup> January 2018, in accordance with the governing consent (PD/07/1777 and EOD PD/12/3098).

**Reason:** In the interests of the proper planning and development of the area and in the interests of orderly development'

7.1.2. The grounds of appeal assert that the condition of the Planning Authority is not reasonable and on the basis of the development description and the planning

application fee paid, the Planning Authority should not have tied the application to previous planning permissions. To assess whether or not this is the case, an understanding of the planning history of the appeal site and review of the development description is necessary.

- 7.1.3. Under Planning Ref. PD/97/757, planning permission was granted in 1997 for a dwellinghouse and septic tank on the appeal site. An application for a change of house type and installation of a septic tank was subsequently granted in January 2003, under Ref. PD/02/1024. Another application proposing a change of house type, including a septic tank and garage, was granted on the appeal site in January 2008 (Ref. PD/07/1777 refers) with twelve conditions of a standard nature attached. An extension of the duration of permission Ref. PD/07/1777 for a further period of 5 years was subsequently granted in December 2012 under Ref. PD/12/3098, which specifically states that permission expires on the 2<sup>nd</sup> day of January 2018. The applicant for each of the above applications was stated as Gerard Dolan.
- 7.1.4. The description of the development, as provided for in the public notices advertising the planning application, stated the following: -
- 'Change of house design and garage with ancillary site works previously granted under Planning Register Reference No. PD/07/1777 & PD/12/3098'
- 7.1.5. It is clear that the description of the development set out in the public notices relates to amendments to previous permissions, and it is in this context that I assess the application and those substantial matters raised within the grounds of appeal.
- 7.1.6. Having regard to the nature and scale of the proposed development, as described in the public notices, the absence of third-parties to the appeal and to the nature of Condition No.1, it is considered that the determination by the Board of the application, as if it had been made to it in the first instance would not be warranted, and, therefore, the Board should determine the matters raised in the appeal only in accordance with Section 139 of the Planning & Development Act 2000, as amended.
- 7.1.7. The grounds of appeal note that the subject Condition No.1, as worded by the Planning Authority, fails to recognise the proposed change of garage type and the additional site works (septic tank), and the Planning Authority noted this error in their response. The wording of the condition should be amended to address this.

## 7.2. Duration of Permission

- 7.2.1. Condition No.1 restricts the duration of the permission, by linking it with the previous permissions referred to in the application development description. Due to operational, procedural and financial constraints, the grounds of appeal assert that the expiry date which the Planning Authority has applied to the permission is not sufficient to allow the development to be completed before the permission expires on the 2<sup>nd</sup> day of January 2018. The grounds of appeal also assert that the Planning Authority have been unreasonable in restricting the development to the stated timeframe and they refer to a legal case (Bord na Móna v An Bord Pleanála & Galway County Council [1985]) and appeal decisions (ABP Refs. PL07.218070, PL20.205233 & PL37.213661) for 'change of house type' proposals, which they consider provide precedent in this matter for a five-year permission to be granted.
- 7.2.2. The Planning Authority state that they consider the subject application to be intrinsically linked to the previous permission dating from January 2008 (Ref. PD/07/1777) and the extension of duration permission (Ref. PD/12/3098) and in determining the application they were bound by the most recent governing consent. The Planning Authority also identify two recent appeal decisions (ABP Refs. PL05E.247770 & PL05E.247155) for 'change of house type' proposals, which they consider to be relevant in determining the appeal and to justify the time constraints applied to the subject condition.
- 7.2.3. The decision to extend the duration of planning permission Ref. PD/07/1777 under Ref. PD/12/3098 stated that the permission would expire on 2<sup>nd</sup> January 2018. Based on the development described in the public notices accompanying the planning application, the applicant subsequently sought to amend the previous permissions, Refs. PD/07/1777 and PD/12/3098 and I consider that the expiry date still applies. Any application for alteration to a previously granted permission, such as a 'change of house type' application, does not automatically entitle the applicant to a further five years to complete the development and should be tied back to the expiry date of the governing planning permission. Previous permissions on this site for 'change of house type' applications (Refs. PD/02/1024 & PD/07/1777) did not include a specific condition restricting the life of these permissions and on this basis the applicant may have expected similar to occur with this planning application. A situation whereby all applications for alterations or amendments to a previously

granted planning permission are granted an additional five years to complete the development could, in theory, result in a situation whereby the life of a planning permission could be extended ad-indefinitum. Planning and environmental policy changes will have occurred and changes to environmental conditions, such as additional one-off houses, may have occurred since the principle for developing a dwellinghouse on this site was granted in 1997 (Ref. PD/97/757). Accordingly, limiting the duration of permissions is reasonable and is appropriate in this appeal.

7.2.4. Consequently, I am satisfied that the time constraints in Condition No.1 linking the application to the previous permissions is reasonable and, therefore, necessary.

### **7.3. Development Contributions**

7.3.1. Condition No.1 links the proposed development with the conditions of the previous permissions referred to in the development description. Condition No.11 of the previous permission PD/07/1777 requires the payment of a development contribution amounting to €5,420, based on the provisions of the RCC Development Contribution Scheme 2007. A revised RCC Development Contribution Scheme 2014 has since been adopted by the Planning Authority and the grounds of appeal assert that based on this the proposed development should attract a lower development contribution of €3,600. The Planning Authority outlines that the monetary difference between the previous contribution, €1,820, and the current contribution, is because the contribution under PD/07/1777 included a water services levy. It is standard practise for Irish Water to charge for domestic water and wastewater service connections equivalent to the water and wastewater portion of development contributions included by Local Authorities in their Development Contribution Schemes prior to 31<sup>st</sup> December 2013.

7.3.2. The grounds of appeal relate to a payment required under Condition No.11 of PD/07/1777, whereas this appeal is against a condition of the current application under Section 139 of the Planning & Development Act 2000, as amended. Given that this application now before the Board is described in the public notices proposes a change of house type, garage and site works, and does not seek to specifically amend a condition of a previous planning permission, it is not considered appropriate to amend the conditions attached to the governing parent permission (Ref. PD/07/1777). In summary, unless specifically applied for in the development

description, the planning appeals process does not provide a retrospective avenue to omit or amend a planning condition of a previous governing planning permission.

#### 7.4. **Conclusion**

- 7.4.1. In conclusion, I am satisfied that Condition No.1 requiring the proposed development to be carried out strictly in accordance with the conditions of the governing permission (Ref. PD/07/1777) and to the extension of duration permission (Ref. PD/12/3098), which specifically states that the permission will expire on 2<sup>nd</sup> January 2018, is warranted, as the proposed development described in the public notices, relates to amendments to previous permissions and as the time constraints linking the application to the previous permissions are reasonable and appropriate. Furthermore, the applicants request to amend a financial contribution condition of a previous governing planning permission via an amendment or omission of Condition No.1 of the subject application, would not be warranted.

#### 8.0 **Appropriate Assessment**

Having regard to the planning history of the site, the nature of the appeal which seeks to alter a condition only and the separation distance 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.

#### 9.0 **Recommendation**

It is recommended that the Planning Authority be directed to **amend** Condition No.1 for the reasons and considerations hereunder.

#### 10.0 **Reasons and Considerations**

Having regard to the nature and scale of the proposed development, as described in the public notices, the planning history for the site, including the parent permission to which the current permission relates, it is considered that Condition No.1 requiring the proposed development to be carried out strictly in accordance with the conditions of the governing permission (Ref. PD/07/1777) and to the extension of duration

permission (Ref. PD/12/3098), and, accordingly, to expire on the 2<sup>nd</sup> day of January 2018, would be warranted, as the proposed development relates to amendments to a previous permissions and as the time constraints linking the application to the previous permissions are reasonable and appropriate. Furthermore, the applicants request to amend a condition of a previous governing planning permission via amendment of Condition No.1 of the subject application, would not be warranted, as permission to amend same was not specifically applied for in the subject application. The proposed development including amended Condition No.1 would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Condition

11.1.1. The Planning Authority should be directed to amend Condition No.1, so that it reads as follows: -

1. Apart from the modifications permitted on foot of this decision, including the change of house design, garage, septic tank and associated site works, the development shall otherwise be carried out in accordance with the terms and conditions of Planning Register Reference No. PD/07/1777, for which the duration of permission was extended under Planning Register Reference No. PD/12/3098 to the 2<sup>nd</sup> day of January 2018.

**Reason:** In the interest of clarity and the proper planning and sustainable development of the area.

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Colm McLoughlin  
Planning Inspector

20<sup>th</sup> November 2017